LAWS OF BRUNEI

CHAPTER 39
COMPANIES ACT

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S 26/1998
S 23/1999
S 69/2001
S 10/2003
S 45/2006
S 96/2008
S 118/2010
S 31/2012
S 61/2014
S 62/2014
S 6/2015

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LAWS OF BRUNEI

REVISED EDITION 2015

CHAPTER 39

COMPANIES

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COMPANIES ACT

An Act to provide for the incorporation and registration of companies in Brunei Darussalam, to control and regulate the relation between the company and its members and between the company and its creditors and the public, to provide for the conditions under which companies incorporated outside Brunei Darussalam may carry on business in Brunei Darussalam and generally to control the functioning within Brunei Darussalam of companies registered locally or carrying on business within Brunei Darussalam

Commencement: 1st January 1957
[S 3/1957]

PRELIMINARY

Citation

1. This Act may be cited as the Companies Act.

Interpretation

2. (1) In this Act —

"accounting standards" means the accounting standards made or formulated by the Accounting Standards Council under Part III of the Accounting Standards Order, 2010 (S 116/2010) and applicable to companies and to companies to which Part IX applies in respect of their operations in Brunei Darussalam for the purposes of this Act;

[S 118/2010]

"annual general meeting", in relation to a company, means a meeting of the company required to be held by section 111(1);

[S 118/2010]

"annual return" means the return required to be made, in the case of a company having a share capital, under section 107, and in the case of a company not having a share capital, under section 108;

"articles" means the articles of association of a company, as originally framed or as altered by special resolution, including, so far as they apply to the company, the regulations contained in Table A in the First Schedule;

"book and paper" and "book or paper" include accounts, deeds, writings and documents;

"certified", in relation to a copy of a document, means certified in the prescribed manner to be a true copy of that document and, in relation to a translation of a document, means certified in the prescribed manner to be a correct translation of that document into the English language;

[S 118/2010]

"charge" includes a mortgage and any agreement to give or execute a charge or mortgage whether upon demand or otherwise;

[S 118/2010]

"Clerk of Council" means the person appointed to the position of Clerk to the Legislative Council;

"company" means a company formed and registered under this Act;

"company limited by guarantee" means a company referred to in section 4(2)*(b)*;

"company limited by shares" means a company referred to in section 4(2)*(a)*;

"corporation" means any body corporate formed, incorporated or existing in Brunei Darussalam or outside Brunei Darussalam and includes any company to which Part IX applies and any limited liability partnership but does not include —

(a) any body corporate incorporated in Brunei Darussalam which is by notification published in the *Gazette* declared to be a public body or agency of the Government or a body corporate which is not incorporated for commercial purposes;

(b) any corporation sole;

(c) any co-operative society;

(d) any registered trade union;

[S 118/2010]

"Court" used in relation to a company means the Court having jurisdiction to wind up the company;

"debenture" includes debenture stock, bonds and any other securities of a company whether constituting a charge on the assets of the company or not;

"default fine" means a default fine within the meaning of section 314;

[S 118/2010]

"director" includes any person occupying the position of director of a corporation by whatever name called and includes a person in accordance with whose directions or instructions the directors of a corporation are accustomed to act and an alternate or substitute director;

[S 118/2010]

"document" includes summons, notice, order, and other legal process, and registers;

"financial year", in relation to any corporation, means the period in respect of which any profit and loss account of the corporation laid before it in general meeting is made up, whether that period is a year or not;

[S 118/2010]

"general rules" means general rules made under section 281 and includes forms;

"manager", in relation to a company, means the principal executive officer of the company for the time being by whatever name called and whether or not he is a director;

[S 118/2010]

"memorandum" means the memorandum of association of a company, as originally framed or as altered in pursuance of any written law;

"Minister" means the Minister of Finance;

[S 31/2012]

"officer", in relation to a corporation, includes —

(a) any director or secretary of the corporation or a person employed in an executive capacity by the corporation;

(b) a receiver and manager of any part of the undertaking of the corporation appointed under a power contained in any instrument; and

(c) any liquidator of a company appointed in a voluntary winding up,

but does not include —

(i) any receiver who is not also a manager;

(ii) any receiver and manager appointed by the Court;

(iii) any liquidator appointed by the Court or by the creditors; and

(iv) an Executive Manager appointed by the Minister under section 149B(1);

[S 118/2010]

"Permanent Secretary" means the Permanent Secretary, Ministry of Finance;

"prescribed" means as respects the provisions of this Act relating to the winding up of companies, prescribed by general rules, and as respects the other provisions of this Act, prescribed by His Majesty the Sultan and Yang Di-Pertuan in Council;

"private company" means —

(a) any company which immediately prior to 31st December 2010, being the date of commencement of the Companies Act (Amendment) Order, 2010 (S 118/2010), was a private company;

(b) any company incorporated as a private company by virtue of section 29; or

(c) any company converted into a private company pursuant to section 30,

being a company which has not ceased to be a private company under section 30;

[S 118/2010]

"prospectus" means any prospectus, notice, circular, advertisement or other invitation, offering to the public for subscription or purchase of any shares or debentures of a company;

"public company" means a company other than a private company;
[S 118/2010]

"Registrar" means the Registrar of Companies appointed under section 288, and includes any Deputy Registrar or Assistant Registrar;
[S 31/2012]

"resident in Brunei Darussalam" has the same meaning as in section 2 of the Income Tax Act (Chapter 35);
[S 118/2010]

"resolution for voluntarily winding up" means a resolution passed under any of the provisions of section 213;

"share" means share in the share capital of a company, and includes stock except where a distinction between stock and shares is expressed or implied;

"statutory report" means the report referred to in section 112(2);

"Table A" means Table A in the First Schedule;
[S 118/2010]

"unlimited company" means a company formed on the principle of having no limit placed on the liability of its members.
[S 118/2010]

(2) A person shall not be deemed, within the meaning of any provision in this Act, to be a person in accordance with whose directions or instructions the directors of a company are accustomed to act, by reason only that the directors of the company act on advice given by him in a professional capacity.

Application

3. This Act applies to every company registered in Brunei Darussalam irrespective of the place or places where the business of such company may be carried on.

PART I

INCORPORATION OF COMPANIES AND MATTERS INCIDENTAL THERETO

MEMORANDUM OF ASSOCIATION

Mode of forming incorporated company

4. (1) Any seven or more persons or, where the company to be formed will be a private company, any two or more persons, associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability.

(2) Such a company may be either —

(a) a company having the liability of its members limited by the memorandum of the amount, if any, unpaid on the shares respectively held by them;

(b) a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up; or

(c) a company not having any limit on the liability of its members (in this Act referred to as an unlimited company).

(3) No company, association or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of any other written law in Brunei Darussalam or letters patent.

[S 118/2010]

(4) So much of subsection (3) as prohibits the formation of an association or partnership consisting of more than twenty persons shall not apply to an association or a partnership formed solely or mainly for the purpose of carrying on any profession or calling which under the provisions of any written law may be exercised only by persons who possess the

qualifications laid down in such written law for the purpose of carrying on that profession or calling.

[S 118/2010]

Requirements with respect to memorandum

5. (1) The memorandum of every company incorporated after 1st January 1957, being the date of commencement of this Act, must state —

(a) the name of the company with "Berhad" or the abbreviation "Bhd" as the last word of the name in the case of a company limited by shares or by guarantee;

(b) in the case of a private limited company, with the word "Sendirian" or the abbreviation "Sdn" as part of its name inserted immediately before the word "Berhad" or before the abbreviation "Bhd" or, in the case of a private unlimited company, at the end of its name.

[S 118/2010]

(2) The memorandum of a company limited by shares or by guarantee must also state that the liability of its members is limited.

(3) The memorandum of a company limited by guarantee must also state that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(4) In the case of a company having a share capital —

(a) the memorandum must also, unless the company is an unlimited company, state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount;

(b) no subscriber of the memorandum may take less than one share;

(c) each subscriber must write opposite to his name the number of shares he takes.

Capacity and powers of company *[S 118/2010]*

5A. (1) Subject to the provisions of this Act and any other written law and its memorandum or articles, a company has —

(a) full capacity to carry on or undertake any business or activity, do any act or enter into any transaction; and

(b) for the purposes of paragraph *(a)*, full rights, powers and privileges.

(2) A company may have the objects of the company included in its memorandum.

(3) The memorandum or articles of a company may contain a provision restricting its capacity, rights, powers or privileges.

***Ultra vires* transactions** *[S 118/2010]*

5B. (1) No act or purported act of a company (including the entering into of an agreement by the company and including any act done on behalf of a company by an officer or agent of the company under any purported authority, whether expressed or implied, of the company) and no conveyance or transfer of property, whether removable or immovable, to or by a company shall be invalid by reason only of the fact that the company was without capacity or power to do such act or to execute or take such conveyance or transfer.

(2) Any such lack of capacity or power may be asserted or relied upon only in —

(a) any proceedings against the company by any member of the company or, where the company has issued debentures secured by a floating charge over all or any of the company's property, by the holder of any of those debentures or the trustee for the holders of those debentures to restrain the doing of any act or acts or the conveyance or transfer of any property to or by the company;

(b) any proceedings by the company or by any member of the company against the present or former officers of the company; or

(c) any application by the Minister of Finance to wind up the company.

(3) If the unauthorised act, conveyance or transfer sought to be restrained in any proceedings under subsection (2)*(a)* is being or is to be performed or made pursuant to any contract to which the company is a party, the Court may, if all the parties to the contract are parties to the proceedings and if the Court considers it to be just and equitable, set aside and restrain the performance of the contract and may allow to the company or to the other parties to the contract, as the case requires, compensation for the loss or damage sustained by either of them which may result from the action of the Court in setting aside and restraining the performance of the contract but anticipated profits to be derived from the performance of the contract shall not be awarded by the Court as a loss or damage sustained.

No constructive notice *[S 118/2010]*

5C. Notwithstanding anything in the memorandum or articles of a company, a person is not affected by, or deemed to have notice or knowledge of the contents of, the memorandum or articles of, or any other document relating to, the company merely because —

(a) the memorandum, articles or document is registered by the Registrar; or

(b) the memorandum, articles or document is available for inspection at the registered office of the company.

Stamp and signature of memorandum

6. The memorandum must bear the same stamp as if it were a deed and must be signed by each subscriber in the presence of at least one witness who must attest the signature.

Restriction on alteration of memorandum

7. A company may not alter the conditions contained in its memorandum except in the cases, in the mode and to the extent for which express provision is made in this Act.

Mode in which and extent to which objects of company may be altered

8. (1) Subject to the provisions of this section, a company may, by special resolution, alter the provisions of its memorandum with respect to the objects of the company so far as may be required to enable it —

(a) to carry on its business more economically or more efficiently;

(b) to attain its main purpose by new or improved means;

(c) to enlarge or change the local area of its operations;

(d) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company;

(e) to restrict or abandon any of the objects specified in the memorandum;

(f) to sell or dispose of the whole or any part of the undertaking of the company; or

(g) to amalgamate with any other company or body of persons.

(2) The alteration shall not take effect until, and except in so far as, it is confirmed on petition by the Court.

(3) Before confirming the alteration, the Court must be satisfied that —

(a) sufficient notice has been given to every holder of debentures of the company, and to any person or class of persons whose interests will, in the opinion of the Court, be affected by the alteration; and

(b) with respect to every creditor who in the opinion of the Court is entitled to object and who signifies his objection in a manner directed by the Court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has been determined or has been secured to the satisfaction of the Court:

Provided that the Court may, in the case of any person or class, for special reasons, dispense with the notice required by this section.

(4) The Court may make an order confirming the alteration either wholly or in part, and on such terms and conditions as it thinks fit.

(5) The Court shall, in exercising its discretion under this section, have regard to the rights and interests of the members of the company or of any class of them, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissentient members, and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement:

Provided that no part of the capital of the company shall be expended in any such purchase.

(6) An office copy of the order confirming the alteration, together with a printed copy of the memorandum as altered, shall, within 15 days from the date of the order, be delivered by the company to the Registrar and he shall register the copy so delivered and shall certify the registration under his hand, and the certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and the confirmation thereof have been complied with, and thenceforth the memorandum as so altered shall be the memorandum of the company. The Court may by order at any time extend the time for the delivery of documents to the Registrar under this section for such period as the Court may think proper.

(7) If a company makes default in delivering to the Registrar any document required by this section to be delivered to him, the company shall be liable to a fine of $50 for every day during which the default continues.

ARTICLES OF ASSOCIATION

Articles prescribing regulations for companies

9. There may in the case of a company limited by shares, and there shall in the case of a company limited by guarantee or unlimited, be registered with the memorandum, articles of association signed by the subscribers to the memorandum and prescribing regulations for the company.

Regulations required in case of unlimited company or company limited by guarantee

10. (1) In the case of an unlimited company, if the company has a share capital, the articles must state the amount of share capital with which the company proposes to be registered.

(2) In the case of an unlimited company or a company limited by guarantee, if the company has not a share capital, the articles must state the number of members with which the company proposes to be registered.

(3) Where a company not having a share capital has increased the number of its members beyond the registered number, it shall, within 15 days after the increase was resolved on or took place, give to the Registrar notice of the increase, and the Registrar shall record the increase. If default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

Adoption and application of Table A

11. (1) Articles of association may adopt all or any of the regulations contained in Table A.

(2) In the case of a company limited by shares and registered after 1st January 1957, being the date of commencement of this Act, if articles are not registered or, if articles are registered, in so far as the articles do not exclude or modify the regulations contained in Table A, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

Printing, stamp and signature of articles

12. Articles must —

(a) be printed;

(b) be divided into paragraphs numbered consecutively;

(c) bear the same stamp as if they were contained in a deed;

(d) be signed by each subscriber of the memorandum of association in the presence of at least one witness who must attest the signature.

Alteration of articles by special resolution

13. (1) Subject to the provisions of this Act and to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles.

(2) Any alteration or addition so made in the articles shall, subject to the provisions of this Act, be as valid as if originally contained therein, and be subject in like manner to alteration by special resolution.

FORM OF MEMORANDUM AND ARTICLES

Statutory forms of memorandum and articles

14. The form of —

(a) the memorandum of association of a company limited by shares;

(b) the memorandum and articles of association of a company limited by guarantee and not having a share capital;

(c) the memorandum and articles of association of a company limited by guarantee and having a share capital;

(d) the memorandum and articles of association of an unlimited company having a share capital,

shall respectively be in accordance with the forms set out in Tables B, C, D and E in the First Schedule, or as near thereto as circumstances admit.

REGISTRATION

Registration of memorandum and articles

15. The memorandum and the articles, if any, shall be delivered to the Registrar and the Registrar shall retain and register them.

Certificate of incorporation

16. On the registration of the memorandum of a company, the Registrar shall certify under his hand that the company is incorporated and, in the case of a limited company, that the company is limited.

Effect of registration

17. From the date of incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act.

[S 62/2014]

Conclusiveness of certificate of incorporation

18. A certificate of incorporation given by the Registrar in respect of any association shall be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorised to be registered and duly registered under this Act.

Declaration to Registrar *[S 62/2014]*

19. A declaration by a person entitled to practise as an advocate, who is engaged in the formation of the company, or by a person named in the articles as a director or secretary of the company to the Registrar that —

(a) all the requirements of the Act relating to the formation of the company have been complied with; and

(b) he has verified the identities of the subscribers to the memorandum, and of the persons named in the memorandum or articles as officers of the proposed company,

and the Registrar may accept such declaration as evidence of compliance.

Power to refuse registration *[S 118/2010]*

19A. Notwithstanding anything in this Act or any other written law, the Registrar shall refuse to register the memorandum and the articles of a proposed company where he is satisfied that —

(a) the proposed company is likely to be used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Brunei Darussalam; or

(b) it would be contrary to national security or interests for the proposed company to be registered.

GENERAL PROVISIONS WITH RESPECT TO NAMES OF COMPANIES

Restriction on registration of companies by certain names

20. (1) No company shall be registered by a name which —

(a) is identical with that by which a company in existence is already registered under any of the provisions of this Act or so nearly resembles that name as to be calculated to deceive, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the Registrar requires;

(aa) is identical to that of any limited liability partnership;
[S 118/2010]

(b) is identical with the name of any company incorporated outside Brunei Darussalam and carrying on business within Brunei Darussalam which has duly complied with the requirements of Part IX or, in the opinion of the Registrar, so nearly resembles that name as to be calculated to deceive, except where the said company is about to cease carrying on business in Brunei Darussalam and signifies its consent in such manner as the Registrar requires;

(c) is identical with any name registered under any written law providing for the registration of business names, or in the opinion of the Registrar, so nearly resembles that name as to be calculated to deceive:

Provided that if the Registrar is satisfied that a company is being registered for the purpose of taking over any business which is carried on under a registered business name, and will be entitled as against the proprietor of that name to use that name, he may register the company by that name;

(d) in the opinion of the Registrar is likely to mislead the public as to the nature or the objects of the company;

(e) contains the words "*Chamber of Commerce*", unless the company is a company which is to be registered under a licence granted in pursuance of section 21 without the addition of the word *"Berhad"* to its name;

(f) contains the words "*Building Society*";

(g) in the opinion of the Registrar is undersirable; or

[S 118/2010]

(h) is a name of a kind that the Minister of Finance has directed the Registrar not to accept for registration.

[S 118/2010]

(2) Except with the consent of His Majesty the Sultan and Yang Di-Pertuan*, no company shall be registered by a name which —

(a) contains the words "*Royal*" or "*Di-Raja*" or, in the opinion of the Registrar suggests or is calculated to suggest the patronage of His Majesty the Sultan and Yang Di-Pertuan or connection with the Government of Brunei Darussalam or any department thereof;

(b) in the opinion of the Registrar suggests or is calculated to suggest, connection with any municipality or other local authority;

(c) contains the words "*Co-operative*";

(d) contains the word "*Brunei Darussalam*";

(e) contains the word "*Savings*";

* Transferred to the Minister of Law** with effect from 31st December 1988 — *[S 31/1988]*
**Transferred further to the Registrar of Companies with effect from 16th September 1998 — *[S 32/1998]*

(f) contains the word "*Trust*" or "*Trustee*".

(3) Notwithstanding anything in this section and section 22, where the Registrar is satisfied that the company has been registered (whether through inadvertence or otherwise and whether before, on or after 31st December 2010, being the date of commencement of the Companies Act (Amendment) Order, 2010 (S 118/2010), by a name which is referred to in subsections (1) and (2), the Registrar may direct the first mentioned company to change its name, and the company shall comply with the direction within 6 weeks after the date of the direction or such longer period as the Registrar may allow.

[S 118/2010]

(4) Any person may apply, in writing, to the Registrar to give a direction to a company under subsection (3) on a ground referred to in that subsection, but the Registrar shall not consider any application to give a direction to a company on the ground referred to in subsections (1) and (2) unless the Registrar receives the application within 12 months from the date of incorporation of the company.

[S 118/2010]

(5) If the company fails to comply with subsection (1), the company and every officer is guilty of an offence and liable on conviction to a fine not exceeding $2,000 and a default fine.

[S 118/2010]

(6) Prior to the registration of —

(a) an intended company or a foreign company; or

(b) the change of name of a company or a foreign company,

the applicant for registration shall apply to the Registrar for a search as to the availability of the proposed name of the intended company, company or foreign company and for reservation of that name, if available.

[S 118/2010]

(7) If the Registrar is satisfied that the application is *bona fide* and that the proposed name is a name by which the intended company, company or a foreign company could be registered without contravention of subsection (1), he shall reserve the proposed name for a period of one month from the date of the lodging of the application.

[S 118/2010]

(8) If, at any time during a period for which a name is reserved, application is made to the Registrar for an extension of that period and the Registrar is satisfied that the application is *bona fide*, he may extend that period for a further period of 3 months.

[S 118/2010]

(9) During a period for which a name is reserved, no company or a foreign company (other than the intended company, company or a foreign company in respect of which the name is reserved) shall be registered under this Act, whether originally or on change of name, under the reserved name or under any other name that, in the opinion of the Registrar, so closely resembles the reserved name as to be likely to be mistaken for that name.

[S 118/2010]

(10) The reservation of name under this section in respect of an intended company, company or a foreign company does not in itself entitle the intended company, or a foreign company to be registered by that name, either originally or on change of name.

[S 118/2010]

Power to dispense with "*Berhad*" in name of charitable and other companies

21. (1) Where it is proved to the satisfaction of His Majesty the Sultan and Yang Di-Pertuan* that an association about to be formed as a religion, charity or any other useful object, and intends to apply its profits, if any, or other income in promoting its objects and to prohibit the payment of limited company is to be formed for promoting commerce, art, science, any dividend to its members, His Majesty the Sultan and Yang Di-Pertuan* may by licence direct that the association may be registered as a company with limited liability, without the addition of the word "*Berhad*" to its name, and the association may be registered accordingly.

* Transferred to the Minister of Law** with effect from 31st December 1988 — *[S 31/1988]*
**Transferred further to the Registrar of Companies with effect from 16th September 1998 — *[S 32/1998]*

(2) A licence by His Majesty the Sultan and Yang Di-Pertuan* under this section may be granted on such conditions and subject to such regulations as he may think fit, and those conditions and regulations shall be binding on the association and shall, if His Majesty the Sultan and Yang Di-Pertuan* so direct, be inserted in the memorandum and articles, or in one of those documents.

(3) The association shall on registration enjoy all the privileges of limited companies, and be subject to all their obligations, except those of using the word "*Berhad*" as any part of its name, and of publishing its name, and of sending lists of members to the Registrar.

(4) A licence under this section may at any time be revoked by His Majesty the Sultan and Yang Di-Pertuan* and upon revocation, the Registrar shall enter the word "*Berhad*" at the end of the name of the association upon the register and the association shall cease to enjoy the exemptions and privileges granted by this section:

Provided that, before a licence is so revoked, His Majesty the Sultan Yang Di-Pertuan* shall give to the association notice in writing of his intention and shall afford the association an opportunity of being heard in opposition to the revocation.

(5) Where the name of the association contains the words "*Chamber of Commerce*", the notice to be given as aforesaid shall include a statement of the effect of the provisions of section 22(3).

Change of name

22. (1) A company may, by special resolution and with the prior approval of His Majesty the Sultan and Yang Di-Pertuan* signified in writing, change its name.

(1A) If the Registrar approves the name which the company has resolved should be its new name, he shall register the company under the new name and issue to the company a notice of incorporation of the company under the new name and, upon the issue of such notice, the change of name shall become effective.

[S 118/2010]

* Transferred to the Minister of Law** with effect from 31st December 1988 — *[S 31/1988]*
**Transferred further to the Registrar of Companies with effect from 16th September 1998 — *[S 32/1998]*

(2) If the name of a company is (whether through inadvertence or otherwise and whether originally or by change of name) a name by which the company could not be registered without contravention of section 20(1) and (2), the company may by special resolution change its name to a name by which the company could be registered without contravention of that subsection and, if the Registrar directs, shall so change it within 6 weeks after the date of the direction or such longer period as the Registrar allows.

[S 118/2010]

(3) Where a licence granted in pursuance of section 21 to a company the name of which contains the words "*Chamber of Commerce*" is revoked, the company shall, within a period of 6 weeks from the date of the revocation or such longer period as His Majesty the Sultan and Yang Di-Pertuan* may think fit to allow, change its name to a name which does not contain those words. If a company makes default in complying with the requirements of this subsection, it shall be guilty of an offence: Penalty, a fine of $250 for every day during which the default continues.

(4) Any person may apply in writing to the Registrar to give a direction to a company under section 20(1) and (2) on a ground referred to in that subsection, but the Registrar shall not consider any application to give a direction to a company on the ground referred to in section 20(1) and (2) unless the Registrar receives the application within 12 months from the date of change of name of the company.

[S 118/2010]

(5) If the company fails to comply with subsection (2), the company and every officer is guilty of an offence and liable on conviction to a fine not exceeding $2,000 and a default fine.

[S 118/2010]

(6) Upon the application of a company and payment of the prescribed fee, the Registrar shall issue to the company a certificate, under his hand and seal, confirming the incorporation of the company under the new name.

[S 118/2010]

* Transferred to the Minister of Law** with effect from 31st December 1988 — *[S 31/1988]*
**Transferred further to the Registrar of Companies with effect from 16th September 1998 — *[S 32/1998]*

(7) The change of name pursuant to this Act shall not affect the identity of the company or any rights or obligations of the company or render defective any legal proceedings by or against the company, and any legal proceedings that might have been continued or commenced by or against it by its former name may be continued or commenced by or against it by its new name.

[S 118/2010]

GENERAL PROVISIONS WITH RESPECT TO MEMORANDUM AND ARTICLES

Effect of memorandum and articles

23. Subject to the provisions of this Act, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed and sealed by each member and contained covenants on the part of each member to observe all the provisions of the memorandum and of the articles.

Moneys payable to be speciality debt

24. All money payable by any member of the company under the memorandum or articles shall be a debt due from him to the company and be of the nature of a speciality debt.

Alterations in memorandum or articles increasing liability to contribute to share capital not to bind existing members without consent

25. Notwithstanding anything in the memorandum or articles of a company, no member of the company shall be bound by an alteration made in the memorandum or articles after the date on which he became a member, if and so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made, or in any way increases his liability as at that date to contribute to the share capital of, or otherwise to pay money to, the company:

Provided that this section shall not apply in any case where the member agrees in writing, either before or after the alteration is made, to be bound thereby.

Copies of memorandum and articles to be given to members

26. (1) A company shall, on being so required by any member, send to him a copy of the memorandum and of the articles, if any, and a copy of any written law which alters the memorandum, subject to payment, in the case of a copy of the memorandum and of the articles, of 50 cents or such sum as the company may with the prior approval of the Registrar prescribe, and in the case of a copy of a written law, of such sum not exceeding the published price thereof as the company may require.

(2) If a company makes default in complying with this section, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a fine of $100.

Issued copies of memorandum to embody alterations

27. (1) Where an alteration is made in the memorandum of a company, every copy of the memorandum issued after the date of the alteration shall be in accordance with the alteration.

(2) If, where any such alteration has been made, the company at any time after the date of the alteration issues any copies of the memorandum which are not in accordance with the alteration, it shall be liable to a fine of $15 for each copy so issued, and every officer of the company who is in default shall be liable to the like penalty.

MEMBERSHIP OF COMPANY

Definition of member

28. (1) The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members.

(2) Every other person who agrees to become a member of a company and whose name is entered in its register of members, shall be a member of the company.

PRIVATE COMPANIES

Meaning of private company

29. (1) For the purposes of this Act, "private company" means a company which by its articles —

(a) restricts the right to transfer its shares;

(b) limits the number of its members to fifty, not including persons who are in the employment of the company and persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be such members after the determination of that employment; and

(c) prohibits any invitation to the public to subscribe for any shares or debentures of the company.

(2) Where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this section, be treated as a single member.

Circumstances in which company ceases to be, or to enjoy privileges of, private company

30. (1) If a company, being a private company, alters its articles in such manner that they no longer include the provisions which, under section 29, are required to be included in the articles of a company in order to constitute it a private company, the company shall, as on the date of the alteration, cease to be a private company and shall, within a period of 14 days after the said date, deliver to the Registrar for registration a prospectus or a statement *in lieu* of prospectus in the form and containing the particulars set out in the Second Schedule.

(2) If default is made in complying with subsection (1), the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a default fine of $500.

(3) Where the articles of a company include the provisions aforesaid but default is made in complying with any of those provisions, the company shall cease to be entitled to the privileges and exemptions conferred on private companies under the provisions contained in

sections 31, 109(3), 129(1) and 162*(d)*, and thereupon those provisions shall apply to the company as if it were not a private company:

Provided that the Court, on being satisfied that the failure to comply with the conditions was accidental or due to inadvertence or to some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any other person interested and on such terms and conditions as seem to the Court just and expedient, order that the company be relieved from such consequences as aforesaid.

REDUCTION OF NUMBER OF MEMBERS BELOW LEGAL MINIMUM

Prohibition of carrying on business with fewer than seven or, in case of private company, two members

31. If at any time the number of members of a company is reduced, in the case of a private company, below two or, in the case of any other company, below seven, and it carries on business for more than 6 months while the number is so reduced, every person who is a member of the company during the time that it so carries on business after those 6 months and is cognisant of the fact that it is carrying on business with fewer than two members or seven members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time and may be severally sued therefor.

CONTRACTS ETC.

Ratification by company of contracts made before incorporation *[S 118/2010]*

31A. (1) Any contract or other transaction purporting to be entered into by a company prior to its formation may be ratified by the company after its formation and thereupon the company shall become bound and entitled to the benefit thereof as if it had been in existence at the date of the contract or other transaction and had been a party thereto.

(2) Prior to ratification by the company, the persons or persons who purported to act in the name or on behalf of the company shall, in the absence of any express agreement to the contrary, be personally bound by the contract or other transaction and entitled to the benefit thereof.

Form of contracts

32. (1) Contracts on behalf of a company may be made as follows —

(a) a contract which if made between private persons would be by law required to be in writing, and if made according to English law to be under seal, may be made on behalf of the company in writing under the common seal of the company;

(b) a contract which if made between private persons would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under its authority, express or implied;

(c) a contract which if made between private persons would by law be valid although made by parole only, and not reduced into writing, may be made by parole on behalf of the company by any person acting under its authority, express or implied.

(2) A contract made according to this section shall be effectual in law and shall bind the company and its successors and all other parties thereto.

(3) A contract made according to this section may be varied or discharged in the same manner in which it is authorised by this section to be made.

Bills of exchange and promissory notes

33. A bill of exchange or promissory note shall be deemed to have been made, accepted or indorsed on behalf of a company if made, accepted or indorsed in the name of, or by or on behalf or on account of, the company by any person acting under its authority.

Execution of deeds abroad

34. (1) A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney to execute deeds on its behalf in any place not situate in Brunei Darussalam.

(2) A deed signed by such an attorney on behalf of the company and under his seal shall bind the company and have the same effect as if it were under its common seal.

Power for company to have official seal for use abroad

35. (1) A company whose objects require or comprise the transaction of business outside Brunei Darussalam may, if authorised by its articles, have for use in any territory, district or place not situate in Brunei Darussalam, an official seal, which shall be a facsimile of the common seal of the company, with the addition on its face of the name of every territory, district or place where it is to be used.

(2) A deed or other document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company.

(3) A company having an official seal for use in any such territory, district or place may, by writing under its common seal, authorise any person appointed for the purpose in that territory, district or place, to affix the official seal to any deed or other document to which the company is party in that territory, district or place.

(4) The authority of any such agent shall, as between the company and any person dealing with the agent, continue during the period, if any, mentioned in the instrument conferring the authority, or if no period is there mentioned, then until notice of the revocation or determination of the agent's authority has been given to the person dealing with him.

(5) The person affixing any such official seal shall, by writing under his hand, certify on the deed or other instrument, to which the seal is affixed, the date on which and the place at which it is affixed.

AUTHENTICATION OF DOCUMENTS

Authentication of documents

36. A document or proceeding requiring authentication by a company may be signed by a director, secretary or other authorised officer of the company and need not be under its common seal.

PART II

SHARE CAPITAL AND DEBENTURES

PROSPECTUS

Date and registration of prospectus

37. (1) A prospectus issued by or on behalf of a company or in relation to an intended company shall be dated and that date shall, unless the contrary is proved, be taken as the date of publication of the prospectus.

(2) A copy of every such prospectus signed by every person who is named therein as a director or proposed director of the company, or by his agent authorised in writing, shall be delivered to the Registrar for registration on or before the date of its publication and no such prospectus shall be issued until a copy thereof has been so delivered for registration.

(3) The Registrar shall not register any prospectus unless it is dated, and the copy thereof signed, in manner required by this section.

(4) Every prospectus shall state on the face of it that a copy has been delivered for registration as required by this section.

(5) If a prospectus is issued without a copy thereof being so delivered, the company and every person who is knowingly a party to the issue of the prospectus is guilty of an offence and liable on conviction to a fine of $25 for every day from the date of the issue of the prospectus until a copy thereof is so delivered.

Specific requirements as to particulars in prospectus

38. (1) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, must state the matters specified in Part I of the Third Schedule and set out the reports specified in Part II of that Schedule, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

(2) A condition requiring or binding an applicant for shares in or debentures of a company to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

(3) It shall not be lawful to issue any form of application for shares in or debentures of a company unless the form is issued with a prospectus which complies with the requirements of this section:

Provided that this subsection does not apply if it is shown that the form of application was issued either —

(a) in connection with an invitation made in good faith to a person to enter into an underwriting agreement with respect to the shares or debentures; or

(b) in relation to shares or debentures which were not offered to the public.

If any person acts in contravention of the provisions of this subsection, he is guilty of an offence and liable on conviction to a fine of $5,000.

(4) In the event of a contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the contravention if —

(a) as regards any matter not disclosed, he proves that he was not cognisant thereof;

(b) he proves that the contravention arose from an honest mistake of fact on his part; or

(c) the contravention was in respect of matters which in the opinion of the court dealing with the case were immaterial or was otherwise such as ought, in the opinion of that Court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters specified in paragraph 15 of Part I of the Third Schedule, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

(5) This section does not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for

shares or debentures will or will not have the right to renounce in favour of other persons, but subject as aforesaid, this section shall apply to a prospectus or a form of application whether issued on or with reference to the formation of a company or subsequently.

(6) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act apart from this section.

Restriction on alteration of terms in prospectus or statement *in lieu* of prospectus

39. (1) A company limited by shares or a company limited by guarantee and having a share capital shall not previously to the statutory meeting vary the terms of a contract referred to in the prospectus or statement *in lieu* of prospectus, except subject to the approval of the statutory meeting.

(2) This section does not apply to a private company.

Liability for statement in prospectus

40. (1) Where a prospectus invites persons to subscribe for shares in or debentures of a company —

(a) every person who is a director of the company at the time of the issue of the prospectus;

(b) every person who has authorised himself to be named and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time;

(c) every person being a promoter of the company; and

(d) every person who has authorised the issue of the prospectus,

shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement therein, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved —

(i) that having consented to become a director of the company he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent;

(ii) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent;

(iii) that after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto and gave reasonable public notice of the withdrawal and of the reason therefor; or

(iv) that —

(A) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, believe, that the statement was true;

(B) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement or it was a correct and fair copy of or extract from the report or valuation; and

(C) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document:

Provided that a person shall be liable to pay the compensation if it is proved that he had no reasonable ground to believe that the person making any such statement, report or valuation as is mentioned in paragraph (iv)(B) was competent to make it.

(2) Where the prospectus contains the name of a person as a director of the company or as having agreed to become a director thereof, and he has not consented to become a director or has withdrawn his consent before the issue of the prospectus, and has not authorised or consented to the issue thereof, the directors of the company, except any director without whose knowledge or consent the prospectus was issued, and any other person who authorised the issue thereof, shall be liable to indemnify the person named as aforesaid against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or in defending himself against any action or legal proceedings brought against him in respect thereof.

(3) Every person who, by reason of his being a director or named as a director or as having agreed to become a director, or of his having authorised the issue of the prospectus, becomes liable to make any payment under this section may recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment, unless the person who has become so liable was, and that other person was not, guilty of fraudulent misrepresentation.

(4) For the purposes of this section —

"expert" includes an engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him;

"promoter" means a promoter who was a party to the preparation of the prospectus, or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company.

Document containing offer of shares or debentures for sale deemed to be prospectus

41. (1) Where a company allots or agrees to allot any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public, any document by which the

offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the company, and all written laws and rules of law as to the contents of prospectuses and to liability in respect of statements in and omissions from prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly, as if the shares or debentures had been offered to the public for subscription and as if persons accepting the offer in respect of any shares or debentures were subscribers for those shares or debentures, but without prejudice to the liability, if any, of the persons by whom the offer is made, in respect of mis-statements contained in the document or otherwise in respect thereof.

(2) For the purposes of this Act, it shall be evidence that, unless the contrary is proved, an allotment of or an agreement to allot shares or debentures was made with a view to the shares or debentures being offered for sale to the public if it is shown that —

(a) an offer of the shares or debentures or of any of them for sale to the public was made within 6 months after the allotment or agreement to allot; or

(b) at the date when the offer was made the whole consideration to be received by the company in respect of the shares or debentures had not been so received.

(3) Section 37 as applied by this section shall have effect as though the persons making the offer were persons named in a prospectus as directors of a company, and section 38 as applied by this section shall have effect as if it required a prospectus to state in addition to the matters required by that section to be stated in a prospectus —

(a) the net amount of the consideration received or to be received by the company in respect of the shares or debentures to which the offer relates; and

(b) the place and time at which the contract under which the said shares or debentures have been or are to be allotted may be inspected.

(4) Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document aforesaid is signed on behalf of the company or firm by two directors of the company or not less

than half of the partners, as the case may be, and any such director or partner may sign by his agent authorised in writing.

ALLOTMENT

Prohibition of allotment unless minimum subscription received

42. (1) No allotment shall be made of any share capital of a company offered to the public for subscription unless the amount stated in the prospectus as the minimum amount which, in the opinion of the directors must be raised by the issue of share capital in order to provide for the matters specified in paragraph 5 in Part I of the Third Schedule, has been subscribed and the sum payable on application for the amount so stated has been paid to and received by the company. For the purposes of this subsection, a sum shall be deemed to have been paid to and received by the company if a cheque for that sum has been received in good faith by the company and the directors of the company have no reason for suspecting that the cheque will not be paid.

(2) The amount so stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in cash and is in this Act referred to as the minimum subscription.

(3) The amount payable on application on each share shall not be less than 5 *per cent* of the nominal amount of the share.

(4) If the conditions aforesaid have not been complied with on the expiration of 40 days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest and, if any such money is not so repaid within 48 days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of 5 *per cent per annum* from the expiration of the 48th day:

Provided that a director shall not be liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(5) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void.

(6) This section, except subsection (3), does not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

Prohibition of allotment in certain cases unless statement *in lieu* of prospectus delivered to Registrar

43. (1) A company having a share capital which does not issue a prospectus on or with reference to its formation, or which has issued such a prospectus but has not proceeded to allot any of the shares offered to the public for subscription, shall not allot any of its shares or debentures unless at least 3 days before the first allotment of either shares or debentures there has been delivered to the Registrar for registration a statement *in lieu* of prospectus, signed by every person who is named therein as a director or a proposed director of the company or by his agent authorised in writing, in the form and containing the particulars set out in the Fourth Schedule.

(2) This section does not apply to a private company.

(3) If a company acts in contravention of this section, the company and every director of the company who knowingly authorises or permits the contravention is guilty of an offence and liable on conviction to a fine of $5,000.

Effect of irregular allotment

44. (1) An allotment made by a company to an applicant in contravention of the provisions of sections 42 and 43 shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later or, in any case where the company is not required to hold a statutory meeting or where the allotment is made after the holding of the statutory meeting, within one month after the date of the allotment and not later, and shall be so voidable notwithstanding that the company is in the course of being wound up.

(2) If any director of a company knowingly contravenes, or permits or authorises the contravention of, any of the provisions of the said sections with respect to allotment, he shall be liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby:

Provided that proceedings to recover any such loss, damages or costs shall not be commenced after the expiration of 2 years from the date of allotment.

Return as to allotments

45. (1) Whenever a company limited by shares or a company limited by guarantee and having a share capital makes any allotment of its shares, the company shall within 8 weeks thereafter deliver to the Registrar for registration —

(a) a return of the allotments stating the number and nominal amount of the shares comprised in the allotment, the names, addresses and descriptions of the allottee and the amount, if any, paid or due and payable on each share; and

(b) in the case of shares allotted as fully or partly paid-up otherwise than in cash, a contract in writing constituting the title of allottee to the allotment together with any contract of sale, or for services or other consideration in respect of which that allotment was made, such contracts being duly stamped, and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid-up and the consideration for which they have been allotted.

(2) Where such a contract as above mentioned in section 45(1)*(b)* is not reduced to writing, the company shall within 8 weeks after the allotment deliver to the Registrar for registration the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing, and those particulars shall be deemed to be an instrument within the meaning of the Stamp Act (Chapter 34), and the Registrar may, as a condition of filing the particulars, require that the duty payable thereon be adjudicated under that Act.

(3) If default is made in complying with this section, every director, manager, secretary or other officer of the company who is knowingly a party to the default is guilty of an offence and liable on conviction to a fine of $250 for every day during which the default continues:

Provided that, in case of default in delivering to the Registrar any document required to be delivered by this section within 8 weeks after the allotment, the company or any person liable for the default may apply to the Court for relief, and the Court, if satisfied that the omission to deliver the document was accidental or due to inadvertence or that it is just and

equitable to grant relief, may make an order extending the time for the delivery of the document for such period as the Court may think proper.

COMMISSIONS AND DISCOUNTS

Power to pay certain commissions, and prohibition of payment of all other commissions, discounts etc.

46. (1) It shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company if —

(a) the payment of the commission is authorised by the articles;

(b) the commission paid or agreed to be paid does not exceed 10 *per cent* of the price at which the shares are issued or the amount or rate authorised by the articles, whichever is the less;

(c) the amount or rate *per cent* of the commission paid or agreed to be paid —

(i) in the case of shares offered to the public for subscription, is disclosed in the prospectus; or

(ii) in the case of shares not offered to the public for subscription, is disclosed in the statement *in lieu* of prospectus or in a statement in the prescribed form signed in like manner as a statement *in lieu* of prospectus, and delivered to the Registrar for registration before the payment of the commission, and where a circular or notice, not being a prospectus, inviting subscription for the shares is issued, is also disclosed in that circular or notice; and

(d) the number of shares which persons have agreed for a commission to subscribe absolutely is disclosed in manner aforesaid.

(2) Save as aforesaid, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount or allowance to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.

(3) Nothing in this section shall affect the power of any company to pay such brokerage as it has up to now been lawful for a company to pay.

(4) A vendor to, promoter of, or other person who receives payment in money or shares from, a company shall have and shall be deemed always to have had power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been legal under this section.

(5) If default is made in complying with the provisions of this section relating to the delivery to the Registrar of the statement in the prescribed form, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a fine of $5,000.

Statement in balance sheet as to commissions and discounts

47. (1) Where a company has paid any sums by way of commission in respect of any shares or debentures or allowed any sums by way of discount in respect of any debentures, the total amount so paid or allowed, or so much, thereof as has not been written off, shall be stated in every balance sheet of the company until the whole amount thereof has been written off.

(2) If default is made in complying with this section, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a default fine.

Prohibition of provision of financial assistance by company for purchase of own shares

48. (1) Subject as provided in this section, it shall not be lawful for a company to give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial

assistance for the purpose of or in connection with a purchase made or to be made by any person of any shares in the company:

Provided that nothing in this section shall be taken to prohibit —

(a) where the lending of money is part of the ordinary business of a company, the lending of money by the company in the ordinary course of its business;

(b) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase by trustees of fully-paid shares in the company to be held by or for the benefit of employees of the company, including any director holding a salaried employment or office in the company;

(c) the making by a company of loans to persons, other than directors, genuinely in the employment of the company with a view to enabling those persons to purchase fully-paid shares in the company to be held by themselves by way of beneficial ownership.

(2) The aggregate amount of any outstanding loans made under the authority of provisos *(b)* and *(c)* to subsection (1) shall be shown as a separate item in every balance sheet of the company.

(3) If a company acts in contravention of this section, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a fine of $5,000.

ISSUE OF REDEEMABLE PREFERENCE SHARES AND SHARES AT DISCOUNT

Power to issue redeemable preference shares

49. (1) Subject to the provisions of this section, a company limited by shares may, if so authorised by its articles, issue preference shares which are, or at the option of the company are to be liable, to be redeemed:

Provided that —

(a) no such shares shall be redeemed except out of profits of the company which would otherwise be available for dividend or

out of the proceeds of a fresh issue of shares made for the purposes of the redemption;

(b) no such shares shall be redeemed unless they are fully paid;

(c) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall, out of profits which would otherwise have been available for dividend, be transferred to a reserve fund, to be called the capital redemption reserve fund, a sum equal to the amount applied in redeeming the shares, and the provisions of this Act relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the capital redemption reserve fund were paid-up share capital of the company;

(d) where any such shares are redeemed out of the proceeds of a fresh issue, the premium, if any, payable on redemption, must have been provided for out of the profits of the company before the shares are redeemed.

(2) There shall be included in every balance sheet of a company which has issued redeemable preference shares a statement specifying what part of the issued capital of the company consists of such shares and the date on or before which those shares are, or are to be liable, to be redeemed.

If a company fails to comply with the provisions of this subsection, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a fine of $5,000.

(3) Subject to the provisions of this section, the redemption of preference shares thereunder may be effected on such terms and in such manner as may be provided by the articles of the company.

(4) Where in pursuance of this section a company has redeemed or is about to redeem any preference shares, it shall have power to issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued, and accordingly the share capital of the company shall not for the purposes of any written law relating to stamp duty be deemed to be increased by the issue of shares in pursuance of this subsection:

Provided that, where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to stamp duty, be deemed to have been issued in pursuance of this subsection unless the old shares are redeemed within one month after the issue of the new shares.

(5) Where new shares have been issued in pursuance of subsection (4), the capital redemption reserve fund may, notwithstanding anything in this section, be applied by the company, up to an amount equal to the nominal amount of the shares so issued, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

Power to issue shares at discount

50. (1) Subject as provided in this section, it shall be lawful for a company to issue, at a discount, shares in the company of a class already issued:

Provided that —

(a) the issue of the shares at a discount must be authorised by resolution passed in general meeting of the company, and must be sanctioned by the Court;

(b) the resolution must specify the maximum rate of discount at which the shares are to be issued;

(c) at the date of the issue, not less than one year must have elapsed since the date on which the company was entitled to commence business; and

(d) the shares to be issued at a discount must be issued within one month after the date on which the issue is sanctioned by the Court or within such extended time as the Court may allow.

(2) Where a company has passed a resolution authorising the issue of shares at a discount, it may apply to the Court for an order sanctioning the issue and on any such application the Court, if having regard to all the circumstances of the case, it thinks proper to do so, may make an order sanctioning the issue on such terms and conditions as it thinks fit.

(3) Every prospectus relating to the issue of the shares and every balance sheet issued by the company subsequently to the issue of the shares must contain particulars of the discount allowed on the issue of the shares or of so much of that discount as has not been written off at the date of the issue of the document in question. If default is made in complying with this subsection, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a default fine.

MISCELLANEOUS PROVISIONS AS TO SHARE CAPITAL

Power of company to arrange for different amounts paid on shares

51. A company, if so authorised by its articles, may do any one or more of the following things —

(a) make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares;

(b) accept from any member the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up;

(c) pay dividend in proportion to the amount paid-up on each share where a larger amount is paid-up on some shares than on others.

Reserve liability of limited company

52. A limited company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up, except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purposes aforesaid.

Power of company limited by shares to alter share capital

53. (1) A company limited by shares or a company limited by guarantee and having a share capital, if so authorised by its articles, may alter the conditions of its memorandum as follows —

(a) increase its share capital by new shares of such amount as it thinks expedient;

(b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;

(c) convert all or any of its paid-up shares into stock, and re-convert that stock into paid-up shares of any denomination;

(d) subdivide its shares or any of them into shares of smaller amount than is fixed by the memorandum, so, however, that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;

(e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) The powers conferred by this section must be exercised by the company in general meeting.

(3) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

Notice to Registrar of consolidation of share capital, conversion of shares into stock etc.

54. (1) If a company having a share capital has —

(a) consolidated and divided its share capital into shares of larger amount than its existing shares;

(b) converted any shares into stock;

(c) re-converted stock into shares;

(d) subdivided its shares or any of them;

(e) redeemed any redeemable preference shares; or

(f) cancelled any shares, otherwise than in connection with a reduction of share capital under section 58,

it shall within one month after doing so give notice thereof to the Registrar specifying, as the case may be, the shares consolidated, divided, converted, subdivided, redeemed or cancelled, or the stock re-converted.

(2) If default is made in complying with this section, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a default fine.

Notice of increase of share capital

55. (1) Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital, it shall within 15 days after the passing of the resolution authorising the increase, give to the Registrar notice of the increase, and the Registrar shall record the increase.

(2) The notice to be given as aforesaid shall include such particulars as may be prescribed with respect to the classes of shares affected and the conditions subject to which the new shares have been or are to be issued, and there shall be forwarded to the Registrar together with the notice a printed copy of the resolution authorising the increase.

(3) If default is made in complying with this section, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a default fine.

Power of unlimited company to provide for reserve share capital on re-registration

56. An unlimited company having a share capital may, by its resolution for registration as a limited company in pursuance of this Act, do either or both of the following things —

(a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the increased capital shall be capable of being called up except in the event and for the purposes of the company being wound up;

(b) provide that a special portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

Power of company to pay interest out of capital in certain cases

57. (1) Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a lengthened period, the company may pay interest on so much of that share capital as is for the time being paid-up for the period and subject to the conditions and restrictions in this section mentioned, and may charge the sum so paid by way of interest to capital as part of the cost of construction of the work or building, or the provision of plant:

Provided that —

(a) no such payment shall be made unless it is authorised by the articles or by special resolution;

(b) no such payment, whether authorised by the articles or by special resolution, shall be made without the previous sanction of the Court;

(c) before sanctioning any such payment the Court may, at the expense of the company, appoint a person to inquire and report to them as to the circumstances of the case, and may before making the appointment, require the company to give security for the payment of the costs of the inquiry;

(d) the payment shall be made only for such period as may be determined by the Court, and that period shall in no case extend beyond the close of the half year next after the half year during which the works or buildings have been actually completed or the plant provided;

(e) the rate of interest shall in no case exceed 4 *per cent per annum* or such other rate as may for the time being be prescribed by the Court;

(f) the payment of the interest shall not operate as a reduction of the amount paid-up on the shares in respect of which it is paid;

(g) the accounts of the company shall show the share capital on which, and the rate at which, interest has been paid out of capital during the period to which the accounts relate.

(2) If default is made in complying with proviso *(g)* to subsection (1), the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a fine of $5,000.

REDUCTION OF SHARE CAPITAL

Special resolution for reduction of share capital

58. (1) Subject to confirmation by the Court, a company limited by shares or a company limited by guarantee and having a share capital may, if so authorised by its articles, by special resolution reduce its share capital in any way, and in particular, without prejudice to the generality of the foregoing power, may —

(a) extinguish or reduce the liability on any of its shares in respect of share capital not paid-up;

(b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or

(c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company,

and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(2) A special resolution under this section is referred to in this Act as a resolution for reducing share capital.

Application to Court for confirming order, objections by creditors and settlement of list of objecting creditors

59. (1) Where a company has passed a resolution for reducing share capital, it may apply by petition to the Court for an order confirming the reduction.

(2) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the Court so directs, the following provisions shall have effect, subject nevertheless to subsection (3) —

(a) every creditor of the company who at the date fixed by the Court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction;

(b) the Court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction;

(c) where a creditor entered on the list whose debt or claim is not discharged or has not been determined does not consent to the reduction, the Court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating, as the Court may direct, the following amount —

(i) if the company admits the full amount of the debt or claim, or, though not admitting it is willing to provide for it, then the full amount of the debt or claim;

(ii) if the company does not admit and is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the Court after the like inquiry and adjudication as if the company were being wound up by the Court.

(3) Where a proposed reduction of share capital involves either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the Court may, if having regard to any special circumstances of the case it thinks proper to do so,

direct that subsection (2) shall not apply as regards any class or any classes of creditors.

Order confirming reduction and powers of Court on making order

60. (1) The Court, if satisfied, with respect to every creditor of the company who under section 59 is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has been determined, or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

(2) Where the Court makes any such order, it may —

(a) if for any special reason it thinks proper to do so, make an order directing that the company shall, during such period, commencing on or at any time after the date of the order as is specified in the order, add to its name as the last words thereof the words "and reduced"; and

(b) make an order requiring the company to publish, as the Court directs, the reasons for reduction or such other information in regard thereto as the Court may think expedient with a view to giving proper information to the public and, if the Court thinks fit, the causes which led to the reduction.

(3) Where a company is ordered to add to its name the words "and reduced", those words shall, until the expiration of the period specified in the order, be deemed to be part of the name of the company.

Registration of order and minute of reduction

61. (1) The Registrar, on production to him of an order of the Court confirming the reduction of the share capital of a company and the delivery to him of a copy of the order and of a minute approved by the Court, showing with respect to the share capital of the company, as altered by the order, the amount of the share capital, the number of shares into which it is to be divided and the amount of each share, and the amount, if any, at the date of the registration deemed to be paid-up on each share, shall register the order and minute.

(2) On the registration of the order and minute, and not before, the resolution for reducing share capital as confirmed by the order so registered shall take effect.

(3) Notice of the registration shall be published in such manner as the Court may direct.

(4) The Registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.

(5) The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum and shall be valid and alterable as if it had been originally contained therein.

(6) The substitution of any such minute as aforesaid for part of the memorandum of the company shall be deemed to be an alteration of the memorandum within the meaning of section 27.

Liability of members in respect of reduced shares

62. (1) In the case of a reduction of share capital, a member of the company, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference, if any, between the amount of the share as fixed by the minute and the amount paid, or the reduced amount, if any, which is to be deemed to have been paid, on the share, as the case may be:

Provided that, if any creditor entitled in respect of any debt or claim to object to the reduction of share capital is, by reason of his ignorance of the proceedings for reduction or of their nature and effect with respect to his claim, not entered on the list of creditors, and, after the reduction, the company is unable, within the meaning of the provisions of this Act with respect to winding up by the Court, to pay the amount of his debt or claim, then —

(a) every person who was a member of the company at the date of the registration of the order for reduction and minute, shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before that date; and

(b) if the company is wound up, the Court, on the application of any such creditor and proof of his ignorance as aforesaid, may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.

(2) Nothing in this section shall affect the rights of the contributories among themselves.

Penalty on concealment of name of creditor

63. If any director, manager, secretary or other officer of the company —

(a) wilfully conceals the name of any creditor entitled to object to the reduction;

(b) wilfully misrepresents the nature or amount of the debt or claim of any creditor; or

(c) aids, abets or is privy to any such concealment or misrepresentation as aforesaid,

he is guilty of an offence and liable on conviction to a fine and imprisonment for one year.

VARIATION OF SHAREHOLDERS' RIGHT

Rights of holders of special classes of shares

64. (1) If in the case of a company, the share capital of which is divided into different classes of shares, provision is made by the memorandum or articles for authorising the variation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of the said provision the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than 15 *per cent* of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation, may apply to the Court to

have the variation cancelled and, where any such application is made, the variation shall not have effect unless and until it is confirmed by the Court.

(2) An application under this section must be made within 7 days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(3) On any such application the Court, after hearing the applicant and any other persons who apply to the Court to be heard and appear to the Court to be interested in the application may, if it is satisfied, having regard to all the circumstances of the case, that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation and shall, if not so satisfied, confirm the variation.

(4) The decision of the Court on any such application shall be final.

(5) The company shall, within 15 days after the making of an order by the Court on any such application, forward a copy of the order to the Registrar and, if default is made in complying with this provision, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a default fine.

(6) In this section, "variation" includes abrogation and "varied" shall be construed accordingly.

TRANSFER OF SHARES AND DEBENTURES, EVIDENCE OF TITLE

Nature of shares

65. (1) The shares or other interest of any member in a company shall be movable property, transferable in manner provided by the articles of the company and shall not be of the nature of immovable property.

(2) Each share in a company having a share capital shall be distinguished by its appropriate number.

(3) Where shares in a company are held by a nominee, such nominee shall disclose the identity of each person on whose behalf those share are held.

[S 61/2014]

(4) The disclosure as required in subsection (3) shall be made in writing to the company within one month of the acquisition of nominee shares.

[S 61/2014]

(5) The company is required to maintain a register of disclosure of nominee shareholdings.

[S 61/2014]

(6) Notwithstanding subsections (3), (4) and (5), all companies that know or have reasonable cause to believe that any of their shares are held by a nominee, shall require such nominee to disclose the identity of each person for whom the shares are held. The nominee shall provide this information within 10 days of the receipt of notice to this effect.

[S 61/2014]

(7) A nominee shareholder who fraudulently provides information to the company which he knows or has reason to believe to be false or misleading is guilty of an offence and liable on conviction to a fine not exceeding $5,000, imprisonment for a term not exceeding 2 years or both.

[S 61/2014]

Transfer not to be registered except on production of instrument of transfer

66. Notwithstanding anything in the articles of a company, it shall not be lawful for the company to register a transfer of shares in or debentures of the company unless a proper instrument of transfer has been delivered to the company:

Provided that nothing in this section shall prejudice any power of the company to register as shareholder or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.

Transfer by personal representative

67. A transfer of the share or other interest of a deceased member of a company made by his personal representative shall, although the personal representative is not himself a member of the company, be as valid as if he had been such a member at the time of the execution of the instrument of transfer.

Registration of transfer at request of transferor

68. On the application of the transferor of any share or interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

Notice of refusal to register transfer

69. (1) If a company refuses to register a transfer of any shares or debentures, the company shall, within 2 months after the date on which the transfer was lodged with the company, send to the transferee notice of the refusal.

(2) If default is made in complying with this section, the company and every director, manager, secretary or other officer of the company who is knowingly a party to the default is guilty of an offence and liable on conviction to a fine of $25 for every day during which the default continues.

Duties of company with respect to issue of certificates

70. (1) Every company shall, within 2 months after the allotment of any of its shares, debentures or debenture stock, and within 2 months after the date on which a transfer of any such shares, debentures or debenture stock is lodged with the company, complete and have ready for delivery the certificates of all shares, the debentures and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide.

For the purposes of this subsection, "transfer" means a transfer duly stamped and otherwise valid, and does not include such a transfer as the company is for any reason entitled to refuse to register and does not register.

(2) If default is made in complying with this section, the company and every director, manager, secretary or other officer of the company who is

knowingly a party to the default is guilty of an offence and liable on conviction to a fine of $25 for every day during which the default continues.

(3) If any company on whom a notice has been served requiring the company to make good any default in complying with the provisions of subsection (1) fails to make good the default within 10 days after the service of the notice, the Court may, on the application of the person entitled to have the certificate or the debentures delivered to him, make an order directing the company and any officer of the company to make good the default within such time as may be specified in the order, and any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officer of the company responsible for the default.

Certificate to be evidence of title

71. A certificate, under the common seal of the company, specifying any shares held by any member, shall be evidence until the contrary be proved of the title of the member to the shares.

Evidence of grant of probate

72. The production to a company of any document which is by law sufficient evidence of probate of the will, or letters of administration of the estate, or confirmation as executor, of a deceased person having been granted to some person, shall be accepted by the company, notwithstanding anything in its articles, as sufficient evidence of the grant.

Share warrants *[S 61/2014]*

73. A company shall not issue any share warrant stating that the bearer of the warrant is entitled to the shares specified therein and which enables the shares to be transferred by delivery of the warrant.

Penalty for personation of shareholder

74. If any person falsely and deceitfully personates any owner of any share or interest in any company, or of any share warrant or coupon, issued in pursuance of this Act, and thereby obtains or endeavours to obtain any such share or interest or share warrant or coupon, or receives or endeavours to receive any money due to any such owner, as if the offender were the true and lawful owner, he is guilty of a seizable offence and liable on conviction to imprisonment for 15 years.

SPECIAL PROVISIONS AS TO DEBENTURES

Right of debenture holders and shareholders to inspect register of debenture holders and to have copies of trust deed

75. (1) Every register of holders of debentures of a company shall, except when duly closed, be open to the inspection of the registered holder of any such debentures and of any holder of shares in the company, but subject to such reasonable restrictions as the company may in general meeting impose, so that not less than 2 hours in each day shall be allowed for inspection. For the purposes of this subsection, a register shall be deemed to be duly closed if closed in accordance with provisions contained in the articles or in the debentures or, in the case of debenture stock, in the stock certificates, or in the trust deed or other document securing the debentures or debenture stock, during such period or periods, not exceeding in the whole 30 days in any year, as may be therein specified.

(2) Every registered holder of debentures and every holder of shares in a company may require a copy of the register of the holders of debentures of the company or any part thereof on payment of 50 cents for every 100 words required to be copied.

(3) A copy of any trust deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request, in the case of a printed trust deed, on payment of the sum of $1 or such less sum as may be prescribed by the company, or where the trust deed has not been printed, on payment of 50 cents for every 100 words required to be copied.

(4) If inspection is refused, or a copy is refused or not forwarded, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a fine of $500 and a default fine of $20.

(5) Where a company is in default as aforesaid, the Court may by order compel an immediate inspection of the register or direct that the copies required shall be sent to the person requiring them.

Perpetual debentures

76. A condition contained in any debentures or in any deed for securing any debentures shall not be invalid by reason only that the debentures are thereby made irredeemable or redeemable only on the happening of a

contingency, however remote, or on the expiration of a period, however long, any rule of equity to the contrary notwithstanding.

Power to re-issue redeemed debentures in certain cases

77. (1) Where after 1st January 1957, being the date of commencement of this Act, a company has redeemed any debentures previously issued, then —

(a) unless any provision to the contrary, whether express or implied, is contained in the articles or in any contract entered into by the company; or

(b) unless the company has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled,

the company shall have, and shall be deemed always to have had, power to re-issue the debentures, either by re-issuing the same debentures or by issuing other debentures in their place.

(2) On a re-issue of redeemed debentures the person entitled to the debentures shall have, and shall be deemed always to have had, the same priorities as if the debentures had never been redeemed.

(3) Where a company has power to re-issue debentures which have been redeemed, particulars with respect to the debentures which can be so re-issued shall be included in every balance sheet of the company.

(4) Where a company has after the passing of this Act deposited any of its debentures to secure advances from time to time on current account or other rent account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.

(5) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a company, shall be treated as the issue of a new debenture for the purposes of stamp duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued:

Provided that any person lending money on the security of a debenture re-issued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp duty or any penalty in respect thereof, unless he had notice or, but for his negligence, might have discovered, that the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp duty and penalty.

Specific performance of contracts to subscribe for debentures

78. A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance.

Payment of certain debts out of assets subject to floating charge in priority to claims under charge

79. (1) Where, in the case of a company registered in Brunei Darussalam, either a receiver is appointed on behalf of the holders of any debentures of the company secured by a floating charge, or possession is taken by or on behalf of those debenture holders of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound up, the debts, which in every winding up are under Part V relating to preferential payments to be paid in priority to all other debts, shall be paid out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.

(2) The period of time mentioned in Part V shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be.

(3) Any payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of general creditors.

PART III

REGISTRATION OF CHARGES

REGISTRATION OF CHARGES WITH REGISTRAR OF COMPANIES

Registration of charges created by companies registered in Brunei Darussalam

80. (1) Subject to the provisions of this Part, every charge created by a company registered in Brunei Darussalam and being a charge to which this section applies shall, so far as any security on the company's property or undertaking is conferred thereby, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the charge, together with the instrument, if any, by which the charge is created or evidenced, are delivered to or received by the Registrar for registration in manner required by this Act within 5 weeks after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a charge becomes void under this section the money secured thereby shall immediately become payable.

(2) The section applies to the following charges —

(a) a charge for the purpose of securing any issue of debentures;

(b) a charge on uncalled share capital of the company;

(c) a charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale;

(d) a charge on land, wherever situate, or any interest therein;

(e) a charge on book debts of the company;

(f) a floating charge on the undertaking or property of the company;

(g) a charge on calls made but not paid;

(h) a charge on a ship or any share in a ship;

(i) a charge on goodwill, on a patent or a licence under a patent, on a trademark or on a copyright or a licence under a copyright.

(3) In the case of a charge created out of Brunei Darussalam comprising solely property outside Brunei Darussalam, the delivery to and the receipt by the Registrar of a copy verified in the prescribed manner of the instrument by which the charge is created or evidenced, shall have the same effect for the purposes of this section as the delivery and receipt of the instrument itself, and 5 weeks after the date on which the instrument or copy could, in due course of post, and if despatched with due diligence, have been received in Brunei Darussalam shall be substituted for 5 weeks after the date of the creation of the charge, as the time within which the particulars and instrument or copy are to delivered to the Registrar.

(4) Where a charge is created in Brunei Darussalam but comprises property outside Brunei Darussalam, the instrument creating or purporting to create the charge may be sent for registration under this section notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situate.

(5) Where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company shall not for the purposes of this section be treated as a charge on those book debts.

(6) The holding of debentures entitling the holder to a charge on land shall not for the purposes of this section be deemed to be an interest in land.

(7) Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled in equal degree is created by a company, it shall for the purposes of this section be sufficient if there are delivered to or received by the Registrar within 5 weeks after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series, the following particulars —

(a) the total amount secured by the whole series;

(b) the dates of the resolutions authorising the issue of the series and the date of the covering deed, if any, by which the security is created or defined;

(c) a general description of the property charged; and

(d) the names of the trustees, if any, for the debenture holders,

together with the deed containing the charge, or if there is no such deed, one of the debentures of the series:

Provided that, where more than one issue is made of debentures in the series, there shall be sent to the Registrar for entry in the register particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.

(8) Where any commission, allowance or discount has been paid or made either directly by a company to any person in consideration of this subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be sent for registration under this section shall include particulars as to the amount of rate *per cent* of the commission, discount or allowance so paid or made, but omission to do this shall not affect the validity of the debentures issued:

Provided that the deposit of any debentures as security for any debt of the company shall not for the purposes of this subsection be treated as the issue of the debentures at a discount.

(9) In this Part, "charge" includes mortgage.

Duty of company to register charges created by company

81. (1) It shall be the duty of a company to send to the Registrar for registration the particulars of every charge created by the company and of the issues of debentures of a series, requiring registration under section 80, but registration of any such charge may be effected on the application of any person interested therein.

(2) Where registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the Registrar on the registration.

(3) If any company makes default in sending to the Registrar for registration the particulars of any charge created by the company, or of the issues of debentures of a series, requiring registration as aforesaid, then, unless the registration has been effected on the application of some other person, the company and every director, manager, secretary or other person, who is knowingly a party to the default is guilty of an offence and liable on conviction to a fine of $250 for every day during which the default continues.

Duty of company to register charges existing on property acquired

82. (1) Where after 1st January 1957, being the date of commencement of this Act, a company registered under this Act acquires any property which is subject to a charge of any such kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Part, the company shall cause the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to be a correct copy) of the instrument, if any, by which the charge was created or is evidenced, to be delivered to the Registrar for registration in manner required by this Act within 5 weeks after the date on which the acquisition is completed:

Provided that, if the property is situate and the charge was created outside Brunei Darussalam, 5 weeks after the date on which the copy of the instrument could, in due course of post and if despatched with due diligence, have been received by Brunei Darussalam shall be substituted for 5 weeks after the completion of the acquisition as the time within which the particulars and the copy of the instrument are to be delivered to the Registrar.

(2) If default is made in complying with this section, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a default fine of $250.

Register of charges to be kept by Registrar

83. (1) The Registrar shall keep, with respect to each company, a register in the prescribed form of all the charges requiring registration under this Part and shall, on payment of the prescribed fee, enter in the register with respect to such charges the following particulars —

(a) in the case of a charge to the benefit of which the holders of a series of debentures are entitled, such particulars as are specified in section 80(7);

(b) in the case of any other charge —

(i) if the charge is a charge created by the company, the date of its creation, and if the charge was a charge existing on property acquired by the company, the date of the acquisition of the property;

(ii) the amount secured by the charge;

(iii) short particulars of the property charged; and

(iv) the persons entitled to the charge.

(2) The Registrar shall give a certificate under his hand of the registration of any charge registered in pursuance of this Part stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of this Part as to registration have been complied with.

(3) The register kept in pursuance of this section shall be open to inspection by any person on payment of the prescribed fee, not exceeding $5 for each inspection.

(4) The Registrar shall keep a chronological index, in the prescribed form and with the prescribed particulars, of the charges entered in the register.

Endorsement of certificate of registration on debentures

84. (1) The company shall cause a copy of every certificate of registration given under section 83 to be endorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the charge so registered:

Provided that nothing in this subsection shall be construed as requiring a company to cause a certificate of registration of any charge so given to be endorsed on any debenture or certificate of debenture stock issued by the company before the charge was created.

(2) If any person knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock which under the

provisions of this section is required to have endorsed on it a copy of a certificate of registration without the copy being so endorsed upon it, he is, without prejudice to any other liability, guilty of an offence and liable on conviction to a fine of $5,000.

Entry of satisfaction

85. The Registrar may, on evidence being given to his satisfaction that the debt for which any registered charge was given has been paid or satisfied, order that a memorandum of satisfaction be entered on the register and shall, if required, furnish the company with a copy thereof.

Rectification of register of charges

86. The Court, on being satisfied that the omission to register a charge within the time required by this Act, or that the omission or misstatement of any particular with respect to any such charge or in a memorandum of satisfaction, was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested, and on such terms and conditions as seem to the Court just and expedient, order that the time for registration shall be extended or, as the case may be, that the omission or misstatement shall be rectified.

Registration of enforcement of security

87. (1) If any person obtains an order for the appointment of a receiver or manager of the property of a company or appoints such a receiver or manager under any powers contained in any instrument, he shall, within 7 days from the date of the order or of the appointment under such powers, give notice of the fact to the Registrar, and the Registrar shall, on payment of the prescribed fee, enter the fact in the register of charges.

(2) Where any person appointed receiver or manager of the property of a company under the powers contained in any instrument ceases to act as such receiver or manager, he shall, on so ceasing, give the Registrar notice to that effect, and the Registrar shall enter the notice in the register of charges.

(3) If any person makes default in complying with the requirements of this section, he is guilty of an offence and liable on conviction to a fine of $25 for every day during which the default continues.

PROVISIONS AS TO COMPANY'S REGISTER OF CHARGES AND AS TO COPIES OF INSTRUMENTS CREATING CHARGES

Copies of instruments creating charges to be kept by company

88. Every company shall cause a copy of every instrument creating any charge requiring registration under this Part to be kept at the registered office of the company:

Provided that, in the case of a series of uniform debentures, a copy of one debenture of the series shall be sufficient.

Company's register of charges

89. (1) Every limited company shall keep at the registered office of the company a register of charges and enter therein all charges specifically affecting property of the company and all floating charges on the undertaking or any property of the company, giving in each case a short description of the property charged, the amount of the charge and, except in the case of securities to bearer, the names of the persons entitled thereto.

(2) If any director, manager or other officer of the company, knowingly and wilfully authorises or permits the omission of any entry required to be made in pursuance of this section, he is guilty of an offence and liable on conviction to a fine of $5,000.

Right to inspect copies of instruments creating mortgages and charges and company's register of charges

90. (1) The copies of instruments creating any charge requiring registration under this Part with the Registrar, and the register of charges, kept in pursuance of section 89, shall be open during business hours (but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than 2 hours in each day shall be allowed for inspection) to the inspection of any creditor or member of the company without fee, and the register of charges shall also be open to the inspection of any other person on payment of such fee, not exceeding $5 for each inspection, as the company may prescribe.

(2) If inspection of such copies or register is refused, any officer of the company refusing inspection and every director and manager of the company authorising or knowingly and wilfully permitting the refusal, is

guilty of an offence and liable on conviction to a fine of $500, and a further fine of $20 for every day during which the refusal continues.

(3) If any such refusal occurs in relation to a company registered in Brunei Darussalam, the Court may by order compel an immediate inspection of the copies or register.

APPLICATION OF PART III TO COMPANIES INCORPORATED OUTSIDE BRUNEI DARUSSALAM

Application of Part III to company incorporated outside Brunei Darussalam

91. The provisions of this Part shall extend to charges on property in Brunei Darussalam which are created, and to charge on property in Brunei Darussalam which is acquired, after 1st January 1957, being the date of commencement of this Act, by a company (whether a company within the meaning of this Act or not) incorporated outside Brunei Darussalam which has an established place of business in Brunei Darussalam.

PART IV

MANAGEMENT AND ADMINISTRATION

REGISTERED OFFICE AND NAME

Registered office of company

92. (1) A company shall, as from the day on which it begins to carry on business or as from the twenty-eighth day after the date of its incorporation, whichever is the earlier, have a registered office in Brunei Darussalam to which all communications and notices may be addressed.

(2) Notice of the situation of the registered office, and of any change therein shall be given within 28 days after the date of the incorporation of the company or of the change, as the case may be, to the Registrar, who shall record the same. The inclusion in the annual return of a company of a statement as to the address of its registered office shall not be taken to satisfy the obligation imposed by this subsection.

(3) If default is made in complying with this section, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a default fine.

Publication of name by company

93. (1) Every company shall —

(a) paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible;

(b) have its name engraven in legible characters on its seal; and

(c) have its name mentioned in legible characters in all notices, advertisements, and other official publications of the company, and in all bills of exchange, promissory notes, indorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts, and letters of credit of the company.

(2) If a company does not paint or affix its name in manner directed by this Act, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a fine of $250, and if a company does not keep its name painted or affixed in manner so directed, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a default fine.

(3) If a company fails to comply with any of the provisions of subsections (1) and (2), the company is guilty of an offence and liable on conviction to a fine of $500.

(4) If a director, manager, or officer of a company or any person on its behalf —

(a) uses or authorises the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid;

(b) issues or authorises the issue of any notice, advertisement or other official publication of the company, or signs or authorises

to be signed on behalf of the company any bill of exchange, promissory note, indorsement, cheque, or order for money or goods, wherein its name is not mentioned in manner aforesaid; or

(c) issues or authorises the issue of any bill of parcels, invoice, receipt, or letter of credit of the company, wherein its name is not mentioned in manner aforesaid,

he is guilty of an offence and liable on conviction to a fine of $500 and shall further be personally liable to the holder of the bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless it is duly paid by the company.

[S 118/2010]

RESTRICTIONS ON COMMENCEMENT OF BUSINESS

Restrictions on commencement of business

94. (1) Where a company having a share capital has issued a prospectus inviting the public to subscribe for its shares, the company shall not commence any business or exercise any borrowing powers unless —

(a) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription;

(b) every director of the company has paid to the company, on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription; and

(c) there has been delivered to the Registrar for registration a declaration by a person entitled to practise as an advocate, who is engaged in the formation of the company, or the secretary or one of the directors, in the prescribed form, that the aforesaid conditions have been complied with.

[S 62/2014]

(2) Where a company having a share capital has not issued a prospectus inviting the public to subscribe for its shares, the company shall not commence any business or exercise any borrowing powers unless —

(a) there has been delivered to the Registrar for registration a statement *in lieu* of prospectus;

(b) every director of the company has paid to the company, on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares payable in cash; and

(c) there has been delivered to the Registrar for registration a declaration by a person entitled to practise as an advocate, who is engaged in the formation of the company, or the secretary or one of the directors in the prescribed form that paragraph *(b)* has been complied with.

[S 62/2014]

(3) The Registrar shall, on the delivery to him of the said declaration and, in the case of a company which is required by this section to deliver a statement *in lieu* of prospectus, of such a statement certifying that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled.

[S 62/2014]

(4) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only and shall not be binding on the company until that date, and on that date it shall become binding.

(5) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures.

(6) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention is, without prejudice to any other liability, guilty of an offence and liable on conviction to a fine of $250 for every day during which the contravention continues.

(7) If a company fails to obtain a certificate to commence business within one year of the date of its incorporation, the Registrar shall send by registered post to the company at its registered office a letter calling upon the company to apply for such certificate.

(8) If the company fails to obtain such certificate within one month of the posting of such letter, the Registrar shall publish in the *Gazette* a notice to the effect that the company will be struck off the register if it fails to obtain such certificate within 2 months after the publication of such notice.

(9) If the company fails to obtain such certificate within 2 months of the publication of such notice, the Registrar shall strike the company off the register and shall publish in the *Gazette* a notification to the effect that the company has been struck off the register.

(10) Upon the publication in the *Gazette* of such notification, the company shall be deemed to be dissolved.

(11) If any company is struck off the register or dissolved under the provisions of this section, the Court, on the application of the company or of any member or creditor thereof may, on any ground which may seem fit to the Court, order that the company be restored to the register, either permanently or temporarily, and may make such restoration subject to any condition which may seem fit to the Court.

(12) Upon the making of any such order, the company shall be restored to the register and shall, subject to any order which the Court may make, be deemed to have continued in existence as if it had not been struck off the register, and the Court may give any directions which may seem necessary in the circumstances.

(13) If no office of the company has been registered, copies of the letter referred to in subsection (7) shall be sent by the Registrar by registered post to each of the persons who subscribed the memorandum of the company at the respective addresses given therein.

(14) Nothing in this section shall apply to a private company.

REGISTER OF MEMBERS

Register of members

95. (1) Every company shall keep in one or more books, a register of its members, and enter therein the following particulars —

(a) the names and addresses, and the occupations, if any, of the members, and in the case of a company having a share capital a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member;

(b) the date at which each person was entered in the register as a member;

(c) the date at which any person ceased to be a member:

Provided that, where the company has converted any of its shares into stock and given notice of the conversion to the Registrar, the register shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares specified in paragraph *(a)*.

(2) If default is made in complying with this section the company and every officer of the company who is in default shall be liable to a default fine.

Index of members of company

96. (1) Every company having more than fifty members shall, unless the register of members is in such a form as to constitute in itself an index, keep an index of the names of the members of the company and shall, within 14 days after the date on which any alteration is made in the register of members, make any necessary alteration in the index.

(2) The index, which may be in the form of a card index, shall in respect of each member contain sufficient indication to enable the account of that member in the register to be readily found.

(3) If default is made in complying with this section, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a default fine.

Provisions as to entries in register in relation to share warrants

97. (1) On the issue of a share warrant, the company shall strike out of its register of members the name of the member then entered therein as holding the shares specified in the warrant as if he had ceased to be a member and shall enter in the register the following particulars —

(a) the fact of the issue of the warrant;

(aa) name and particulars of the holder of the warrant;

[S 61/2014]

(b) a statement of the shares included in the warrant, distinguishing each share by its number; and

(c) the date of the issue of the warrant.

(2) The holder of a share warrant is required to surrender the warrants for cancellation by 31st December 2015 and have his name entered as a member in the register of members.

[S 61/2014]

(3) The company shall be responsible for any loss incurred by any person by reason of the company entering in the register the name of a holder of a share warrant in respect of the shares there in specified without the warrant being surrendered and cancelled.

[S 61/2014]

(4) Until the warrant is surrendered, the particulars specified in subsection (1) shall be deemed to be the particulars required by this Act to be entered in the register of members, and on the surrender, the date of the surrender must be entered.

(5) Subject to the provisions of this Act, the holder of a share warrant may, if the articles of the company so provide, be deemed to be a member of the company, either to the full extent or for any purposes defined in the articles.

[S 61/2014]

Inspection of register of members

98. (1) The register of members, commencing from the date of the registration of the company, and the index of the names of members, shall be kept at the registered office of the company, and except when the register is closed under the provisions of this Act, shall during business hours (subject to such reasonable restrictions as the company in general meeting may impose, so that not less than 2 hours in each day be allowed for inspection) be open to the inspection of any member without charge and of any other person on payment of $5 or such less sum as the company may prescribe, for each inspection.

(2) Any member or other person may require a copy of the register or of any part thereof, on payment of 50 cents or such less sum as the company may prescribe, for every 100 words or fractional part thereof required to be copied. The company shall cause any copy so required by any person to be sent to that person within a period of 10 days commencing on the day next after the day on which the requirement is received by the company.

(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper period, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to, in respect of each offence, a fine of $200 and a default fine of $20.

(4) In the case of any such refusal or default, the Court may by order compel an immediate inspection of the register and index or direct that the copies required shall be sent to the persons requiring them.

Power to close register

99. A company may, on giving notice by advertisement in some newspaper in Brunei Darussalam, close the register of members for any time or times not exceeding in the whole 30 days in each year.

Power of Court to rectify register

100. (1) If —

(a) the name of any person is, without sufficient cause, entered in or omitted from the register of members of a company; or

(b) default is made or unnecessary delay takes place, in entering on the register the fact of any person having ceased to be a member,

the person aggrieved, or any member of the company, or the company, may apply to the Court for rectification of the register.

(2) Where an application is made under this section, the Court may either refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved.

(3) On an application under this section, the Court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand, and generally may decide any question necessary or expedient to be decided for rectification of the register.

(4) In the case of a company required by this Act to send a list of its members to the Registrar, the Court, when making an order for rectification of the register, shall by its order direct notice of the rectification to be given to the Registrar.

Trusts not to be entered on register

101. No notice of any trust, expressed, implied or constructive, shall be entered on the register, or be receivable by the Registrar, in the case of companies registered in Brunei Darussalam.

Register to be evidence

102. The register of members shall, unless and until the contrary be proved, be evidence of any matters by this Act directed or authorised to be inserted therein.

LOCAL OR BRANCH REGISTERS

Power for company to keep local or branch register

103. (1) The Registrar may, subject to instruction from His Majesty the Sultan and Yang Di-Pertuan* issue an annual licence, available for the period of one year, to any company whose objects comprise the transaction of business outside Brunei Darussalam, empowering such company, if it is authorised so to do by its regulations as originally framed or as altered by special resolution, to keep in any place in which it transacts business a register or registers of members:

* Transferred to the Minister of Law** with effect from 31st December 1988 — *[S 31/1988]*
**Transferred further to the Registrar of Companies with effect from 16th September 1998 — *[S 32/1998]*

Provided that a company applying for such licence must satisfy the Registrar, by a statutory declaration to be filed with him or otherwise, that a substantial part of the business of the company is carried on, at or near the place where it desires to keep such register.

Every such licence shall be valid only until the 31st day of December next following the date on which it is issued:

Provided always that where the period between the date of the issue of the first annual licence to a company and the 31st day of December next following is less than a year, a proportionate part only of the fee mentioned in subsection (2) shall be charged.

(2) An annual fee at the rate of 2 cents for every $100 of the paid-up capital of the company to which the licence is issued shall be paid by such company in respect of such licence. Such fees shall be paid to the Registrar within 4 months of the date of the licence.

(3) When the Registrar has reasonable cause to believe that a company is keeping, in any place where it transacts business outside Brunei Darussalam, a register of members without having a valid licence under this Act, he shall publish in the *Gazette* and send to the company a notice that at the expiration of 2 months from the date of such notice the name of the company mentioned therein will, unless cause to the contrary is shown, be struck off the register and the company will be dissolved.

(4) At the expiration of the time mentioned in the notice, the Registrar may, unless cause to the contrary is previously shown by the company, strike the name of the company off the register and shall publish notice thereof in the *Gazette*, and on such publication the company whose name is so struck off shall be dissolved:

Provided that the liability, if any, of every director, managing officer and member of the company shall continue and may be enforced as if the company had not been dissolved.

(5) If any company or member thereof feels aggrieved by the name of such company having been struck off the register in pursuance of this section, the company or member may apply to the Court, and the Court, if it is satisfied that it is just to do so, may order the name of the company to be restored to the register and thereupon the company shall be deemed to have continued in existence as if the name had never been struck off, and the

Court may, by the order, give such directions and make such provisions as seem just for placing the company and all other persons in the same position, as nearly as may be, as if the name of the company had never been struck off.

(6) A letter or notice under this section may be addressed to the company as its registered office, or if no office has been registered, to the care of some director or officer of the company, or if there is no director or officer of the company whose name and address are known to the Registrar, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

(7) If default is made in complying with subsection (2), the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a default fine.

Regulations as to branch register

104. (1) A local or branch register shall be deemed to be part of the company's register of members (in this section and in section 105 referred to as the principal register).

(2) It shall be kept in the same manner in which the principal register is by this Act required to be kept, except that the advertisement before closing the register shall be inserted in some newspaper circulating in Brunei Darussalam.

(3) The company shall transmit to its registered office a copy of every entry in its local or branch register as soon as practicable after the entry is made, and shall cause to be kept at its registered office, duly entered up from time to time, a duplicate of its local or branch register. Every such duplicate shall, for all the purposes of this Act, be deemed to be part of the principal register.

(4) Subject to the provisions of this section with respect to the duplicate register, the shares registered in a local or branch register shall be distinguished from the shares registered in the principal register, and no transaction with respect to any shares registered in a local or branch register shall, during the continuance of that registration, be registered in any other register.

(5) A company may discontinue to keep a local or branch register, and thereupon all entries in that register shall be transferred to some other local or branch register kept by the company or to the principal register.

(6) Subject to the provisions of this Act, any company may, by its articles, make such provisions as it may think fit respecting the keeping of local or branch registers.

(7) If default is made in complying with subsection (3), the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a default fine.

Exemption from certain duties in case of shares registered in local branch registers

105. (1) An instrument of transfer of a share registered in a local or branch register, shall be deemed to be a transfer of property situate out of Brunei Darussalam, and unless executed in any part of Brunei Darussalam, shall be exempt from stamp duty chargeable in Brunei Darussalam.

(2) No estate duty shall be payable in respect of the share or other interest of a deceased member registered in a local or branch register kept out of Brunei Darussalam under this Act.

Provisions as to or branch registers of companies kept in Brunei Darussalam

106. If by virtue of the law in force in any foreign country, companies incorporated under the law of that foreign country and registered in Brunei Darussalam under Part IX of the Act, have power to keep in the Brunei Darussalam local or branch registers of their members resident in Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan in Council* may by order direct that sections 98 and 100 shall, subject to any modifications and adaptations specified in the order, apply to and in relation to any such local or branch registers kept in Brunei Darussalam as they apply to and in relation to the registers of companies within the meaning of this Act.

* Transferred to the Minister of Law** with effect from 31st December 1988 — *[S 31/1988]*
**Transferred further to the Registrar of Companies with effect from 16th September 1998 — *[S 32/1998]*

ANNUAL RETURN

Annual return to be made by company having share capital

107. (1) Every company having a share capital shall once at least in every year make a return containing a list of all persons who, on the day of the first or only ordinary general meeting in the year, are members of the company, and of all persons who have ceased to be members since the date of the last return or, in the case of the first return, of the incorporation of the company.

(2) The list must state the names, addresses and occupations of all the past and present members therein mentioned and the number of shares held by each of the existing members at the date of the return, specifying shares transferred since the date of the last return or, in the case of the first return, of the incorporation of the company by persons who are still members and have ceased to be members respectively and the dates of registration of the transfers, and if the names therein are not arranged in alphabetical order, must have annexed to it an index sufficient to enable the name of any person in the list to be readily found:

Provided that, where the company has converted any of its shares into stock and given notice of the conversion to the Registrar, the list must state the amount of stock held by each of the existing members instead of the amount of shares and the particulars relating to shares herein before required.

(3) The return must also state the address of the registered office of the company and must contain a summary distinguishing between shares issued for cash and shares issued as fully or partly paid-up otherwise than in cash, and specifying the following particulars —

(a) the amount of the share capital of the company, and the number of the shares into which it is divided;

(b) the number of shares taken from the commencement of the company up to the date of the return;

(c) the amount called up on each share;

(d) the total amount of calls received;

(e) the total amount of calls unpaid;

(f) the total amount of the sums, if any, paid by way of commission in respect of any shares or debentures;

(g) particulars of the discount allowed on the issue of any shares issued at a discount, or of so much of that discount as has not been written off at the date on which the return is made;

(h) the total amount of the sums, if any, allowed by way of discount in respect of any debentures since the date of the last return;

(i) the total number of shares forfeited;

(j) the total amount of shares for which share warrants are outstanding at the date of the return;

(k) the total amount of share warrants issued and surrendered respectively since the date of the last return;

(l) the number of shares comprised in each share warrant;

(*m)* all such particulars with respect to the persons who at the date of the return are the directors of the company as are by this Act required to be contained with respect to directors in the register of the directors of a company;

(n) the total amount of the indebtedness of the company in respect of all mortgages and charges which are required to be, registered with the Registrar under this Act.

(4) The return shall be in accordance with the form set out in the Fifth Schedule or as near thereto as circumstances admit.

(5) In the case of a company keeping a branch register, the particulars of the entries in that register shall, so far as they relate to matters which are required to be stated in the return, be included in the return made next after copies of those entries are received at the registered office of the company.

Annual return to be made by company not having share capital

108. (1) Every company not having a share capital shall once at least in every year make a return stating —

(a) the address of the registered office of the company;

(b) all such particulars with respect to the persons who at the date of the return are the directors of the company as are by this Act required to be contained with respect to directors in the register of directors of a company.

(2) There shall be annexed to the return a statement containing particulars of the total amount of the indebtedness of the company in respect of all mortgages and charges which are required to be registered with the Registrar under this Act.

General provisions as to annual returns

109. (1) The annual return must be contained in a separate part of the register of members and must be completed within 28 days after the first or only general meeting in the year, and the company shall forthwith forward to the Registrar a copy signed by a director or by the manager or by the secretary of the company.

(2) Section 98 applies to the annual return as it applies to the register of members.

(3) Except where the company is a private company, the annual return shall include a written copy, certified by a director or the manager or secretary of the company to be a true copy, of the last balance sheet which has been audited by the company's auditors, including every document required by law to be annexed thereto, together with a copy of the report of the auditors thereon certified as aforesaid, and if any such balance sheet is in a foreign language there shall also be annexed to it a translation thereof in such language as may be prescribed by the Registrar, certified in the prescribed manner to be a correct translation:

Provided that, if such last balance sheet did not comply with the requirements of the law as in force at the date of the audit with respect to the form of balance sheets, there shall be made such additions to and corrections in such copy as would have been required to be made in such balance sheet

in order to make it comply with such requirements, and the fact that such copy has been so amended shall be stated thereon.

(4) If a company contravenes this section or, section 107 or 108, the company and every officer of the company who is in default shall be liable to a default fine.

(5) For the purposes of subsection (4) "officer", and for the purposes of sections 107 and 108 "director", shall include any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

Certificates to be sent by private company with annual return

110. A private company shall send with the annual return required by section 107 a certificate signed by a director or the secretary of the company that the company has not issued, since the date of the last return, or in the case of a first return, since the date of the incorporation of the company, any invitation to the public to subscribe for any shares or debentures of the company, and where the annual return discloses the fact that the number of members of the company exceeds fifty, also a certificate so signed that the excess consists wholly of persons who, under section 29(1)*(b)*, are not to be included in reckoning the number of fifty.

MEETINGS AND PROCEEDINGS

Annual general meetings *[S 118/2010]*

111. (1) A general meeting of every company, to be called the annual general meeting, shall in addition to any other meeting be held once in every calendar year and not more than 15 months after the holding of the last preceding annual general meeting, but so long as a company holds its first annual general meeting within 18 months of its incorporation, it need not hold it in the year of its incorporation or in the following year.

(2) Notwithstanding subsection (1), the Registrar, on the application of the company, may, if for any special reason he thinks fit to do so, extend the period of 15 months or 18 months referred to in that subsection, notwithstanding that such period is so extended beyond the calendar year.

(3) Subject to notice being given to all persons entitled to receive notice of the meeting, a general meeting may be held at any time and the company may resolve that any meeting held or summoned to be held shall be the annual general meeting of the company.

(4) If default is made in holding an annual general meeting —

(a) the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a fine not exceeding $5,000 and a default fine; and

(b) the Court may on the application of any member order a general meeting to be called.

Statutory meeting and statutory report

112. (1) Every company limited by shares and every company limited by guarantee and having a share capital shall, within a period of not less than one month nor more than 3 months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company, which shall be called the statutory meeting.

(2) The directors shall, at least 7 days before the day on which the meeting is held, forward a report to every member of the company.

(3) The statutory report shall be certified by not less than two directors of the company, or where there are less than two directors, by the sole director and manager, and shall state —

(a) the total number of shares allotted, distinguishing shares allotted as fully or partly paid-up otherwise than in cash, and stating in the case of shares partly paid-up the extent to which they are so paid-up, and in either case the consideration for which they have been allotted;

(b) the total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid;

(c) an abstract of the receipts of the company and of the payments made thereout, up to a date within 7 days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the

payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company;

(d) the names, addresses and descriptions of the directors, auditors, if any, managers, if any, and secretary of the company; and

(e) the particulars of any contract, the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification.

(4) The statutory report shall, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares, and to the receipts and payments of the company on capital account, be certified as correct by the auditors, if any, of the company.

(5) The directors shall cause a copy of the statutory report, certified as required by this section, to be delivered to the Registrar for registration forthwith after the sending thereof to the members of the company.

(6) The directors shall cause a list showing the names, descriptions and addresses of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any member of the company during the continuance of the meeting.

(7) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company, or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed.

(8) The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.

(9) In the event of any default in complying with the provisions of this section, every director of the company who is guilty of or who

knowingly and wilfully authorises or permits the default is guilty of an offence and liable on conviction to a fine of $2,500.

(10) This section does not apply to a private company.

Convening of extraordinary general meeting on requisition

113. (1) The directors of a company, notwithstanding anything in its articles shall, on the requisition of members of the company holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital of the company as at the date of the deposit, carries the right of voting at general meetings of the company, or in the case of a company not having a share capital, members of the company representing not less than one-tenth of the total voting rights of all the members having at such date a right to vote at general meetings of the company, forthwith proceed duly to convene an extraordinary general meeting of the company.

(2) The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form, each signed by one or more requisitionists.

(3) If the directors do not within 21 days from the date of the deposit of the requisition proceed duly to convene a meeting, the requisitionists or any of them representing more than one-half of the total voting rights of all of them, may themselves convene a meeting, but any meeting so convened shall not be held after the expiration 3 months from such date.

(4) A meeting convened under this section by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

(5) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and any sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were in default.

(6) For the purposes of this section, the directors shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be deemed not to have duly convened the meeting if they do not give such notice thereof as is required by section 116.

Provisions as to meetings and votes

114. (1) The following provisions shall have effect in so far as the articles of the company do not make other provision in that behalf —

(a) a meeting of a company, other than a meeting for the passing of a special resolution, may be called by 7 days' notice in writing;

(b) notice of the meeting of a company shall be served on every member of the company in the manner in which notices are required to be served by Table A, and for the purpose of this paragraph the expression "Table A" means that table as for the time being in force;

(c) two or more members holding not less than one-tenth of the issued share capital or, if the company has not a share capital, not less than 5 *per cent* in number of the members of the company may call a meeting;

(d) in the case of a private company two members, and in the case of any other company three members, personally present shall be a *quorum;*

(e) any member elected by the members present at a meeting may be chairman thereof;

(f) in the case of a company originally having a share capital, every member shall have one vote in respect of each share or each $100 of stock held by him, and in any other case every member shall have one vote.

(2) If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called, or to conduct the meeting of the company in manner prescribed by the articles or this Act, the Court may, either of its own motion or on the application of any director of the company or of any member of the company

who would be entitled to vote at the meeting, order a meeting of the company to be called, held and conducted in such manner as the Court thinks fit, and where any such order is made, may give such ancillary or consequential directions as it thinks expedient, and any meeting called, held and conducted in accordance with any such order shall for all purposes be deemed to be a meeting of the company duly called, held and conducted.

Representation of companies at meetings of other companies and of creditors

115. (1) A corporation, whether a company within the meaning of this Act or not, may —

(a) if it is a member of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company;

(b) if it is a creditor (including a holder of debentures) of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of any creditors of the company, held in pursuance of this Act or of any rules made thereunder, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.

(2) A person authorised as aforesaid shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual shareholder, creditor or holder of debentures, of that other company.

Provisions as to extraordinary and special resolutions

116. (1) A resolution shall be an extraordinary resolution when it has been passed by a majority of not less than three-fourths of such members as, being entitled so to do, vote in person or, where proxies are allowed, by proxy, at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given.

(2) A resolution shall be a special resolution when it has been passed by such a majority as is required for the passing of an extraordinary resolution and at a general meeting of which not less than 21 days' notice,

specifying the intention to propose the resolution as a special resolution, has been duly given:

Provided that, if all the members entitled to attend and vote at any such meeting so agree, a resolution may be proposed and passed as a special resolution at a meeting of which less than 21 days' notice has been given.

(3) At any meeting at which an extraordinary resolution or a special resolution is submitted to be passed, a declaration of the chairman that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(4) At any meeting at which an extraordinary resolution or a special resolution is submitted to be passed, a poll shall be taken to be effectively demanded if demanded —

(a) by such number of members for the time being entitled under the articles to vote at the meeting as may be specified in the articles, so however, that it shall not in case be necessary for more than five members to make the demand; or

(b) if no provision is made by the articles with respect to the right to demand the poll, by three members so entitled or by one member or two members so entitled, if that member holds or those two members together hold not less than 15 *per cent* of the paid-up share capital of the company.

(5) When a poll is demanded in accordance with this section, in computing the majority on the poll, reference shall be had to the number of votes to which each member is entitled by virtue of this Act or of the articles of the company.

(6) For the purposes of this section, notice of a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in manner provided by this Act or the articles.

Registration and copies of certain resolutions and agreements

117. (1) A printed copy of every resolution or agreement to which this section applies shall, within 15 days after the passing or making thereof, be forwarded to the Registrar and recorded by him.

(2) Where articles have been registered, a copy of every such resolution or agreement for the time being in force shall be embodied in or annexed to every copy of the articles issued after the passing of the resolution or the making of the agreement.

(3) Where articles have not been registered, a printed copy of every such resolution or agreement shall be forwarded to any member at his request, on payment of one dollar or such sum as the company with the approval of the Registrar direct.

(4) This section applies to —

(a) special resolutions;

(b) extraordinary resolutions;

(c) resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless, as the case may be, they had been passed as special resolutions or as extraordinary resolutions;

(d) resolutions or agreements which have been agreed to by all the members of some class of shareholders, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by some particular majority or otherwise in some particular manner, and all resolutions or agreements which effectively bind all the members of any class of shareholders though not agreed to by all those members;

(e) resolution requiring a company to be wound up voluntarily, passed under section 213(1)*(a)*.

(5) If a company fails to comply with subsection (1), the company and every officer of the company who is in default shall be liable to a default fine of $50.

(6) If a company fails to comply with subsection (2) or (3), the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a fine of $15 for each copy in respect of which default is made.

(7) For the purposes of subsections (5) and (6), a liquidator of the company shall be deemed to be an officer of the company.

Resolutions passed at adjourned meetings

118. Where a resolution is passed at an adjourned meeting of —

(a) a company;

(b) the holders of any class of shares in a company;

(c) the directors of a company,

the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed and shall not be deemed to have been passed on any earlier date.

Minutes of proceedings of meeting and directors

119. (1) Every company shall cause minutes of all proceedings of general meetings, and where there are directors or managers, of all proceedings at meetings of its directors or of its managers, to be entered in books kept for that purpose.

(2) Any such minute if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

(3) Where minutes have been made in accordance with the provisions of this section of the proceedings at any general meeting of the company or meeting of directors or managers, then, until the contrary is proved, the meeting shall be deemed to have been duly held and convened, and all proceedings had thereat to have been duly had, and all appointments of directors, managers or liquidators shall be deemed to be valid.

Inspection of minute books

120. (1) The books containing the minutes of proceedings of any general meeting of a company held after 1st January 1957, being the date of commencement of this Act, shall be kept at the registered office of the company, and shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose,

so that no less than 2 hours in each day be allowed for inspection) be open to the inspection of any member without charge.

(2) Any member shall be entitled to be furnished with, within 7 days after he has made a request in that behalf to the company, a copy of any such minutes as aforesaid at a charge not exceeding 50 cents for every 100 words.

(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper time, the company and every officer of each company who is in default is guilty of an offence and liable on conviction to, in respect of each offence, a fine of $200 and a default fine of $20.

(4) In the case of any such refusal or default, the Court may by order compel an immediate inspection of the books in respect of all proceedings of general meetings or direct that the copies required shall be sent to the persons requiring them.

ACCOUNTS AND AUDIT

Keeping of books of account

121. (1) Every company shall cause to be kept proper books of account with respect to —

(a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;

(b) all sales and purchases of goods by the company;

(c) the assets and liabilities of the company.

And for this purpose every company shall cause to be kept the following books —

(i) a cash book or books which shall contain a full and complete record of all sums of money paid to the company or to any agent of the company and of all sums of money expended by the company or by any

agent of the company and of the matters in respect of which such receipt and expenditure take place:

Provided that, there shall also be kept a book which shall contain a daily summary of all the receipts and payments which are recorded in the cash book or books. There shall be set out in such summary under appropriate heads the daily totals of receipts and payments in such a manner as to show clearly their respective sources and the accounts in respect of which they are made, and full particulars shall be given in respect of all receipts and payments on account of capital and of all payments made to directors of the company. The entries in such book shall in every case be made at a date not later than one month from the date under which the transactions of which they are a record are entered in the cash book or books;

(ii) a journal or other book or books in which shall be recorded all financial transactions of the company other than cash transactions and all transactions which in any way affect the accretions and diminutions on capital and revenue accounts of the company with full explanations of such transactions; and

(iii) a ledger or other book or books in which shall be entered each to its proper account the transactions recorded in the cash book and journal so as to show the financial relations of the company with every party with whom it has dealings and the financial position of the company itself.

(1A) The company shall retain the records referred to in subsection (1) for a period of not less than 7 years from the end of the financial year in which the transaction or operations to which those records relate, are completed.

[S 61/2014]

(2) The books of account shall be kept at the registered office of the company or at such other place as the directors think fit, and shall at all times be open to inspection by the directors.

(3) If any person being a director of a company fails to take all reasonable steps to secure compliance by the company with the requirements of this section, or has by his own wilful act been the cause of any default by the company thereunder, he is guilty of an offence and liable on conviction to, in respect of each offence, a fine of $5,000 or imprisonment for 2 years:

Provided that a person shall not be sentenced to imprisonment for an offence under this section unless, in the opinion of the Court dealing with the case, the offence was committed wilfully.

Profit and loss account and balance sheet

122. (1) The directors of every company shall, at some date not later than 18 months after the incorporation of the company and subsequently once at least in every calendar year, lay before the company in general meeting a profit and loss account or, in the case of a company not trading for profit, an income and expenditure account for the period, in the case of the first account, since the incorporation of the company, and in any other case, since the preceding account, made up to a date not earlier than the date of the meeting by more than 9 months or, in the case of a company carrying on business or having interests abroad, by more than 12 months:

Provided that the Court, if for any special reason they think fit so to do, may, in the case of any company, extend the period of 18 months and in the case of any company and with respect to any year extend the periods of 9 and 12 months.

(2) The directors shall cause to be made out in every calendar year and to be laid before the company in general meeting, a balance sheet as at the date to which the profit and loss account, or the income and expenditure account, as the case may be, is made-up, and there shall be attached to every such balance sheet a report by the directors with respect to the state of the company's affairs, the amount, if any, which they recommend should be paid by way of dividend, and the amount, if any, which they propose to carry to the reserve fund, general reserve or reserve account shown specifically on the balance sheet, or to a reserve fund, general reserve or reserve account to be shown specifically on a subsequent balance sheet.

(2A) The report to which subsection (2) relates shall state with appropriate details —

(a) the names of the directors in office during the period under report;

(b) whether during the financial year under report, the company was party, to any arrangements whose objects were, (or one of whose objects was), to enable directors of the company to acquire benefits by means of the acquisition of shares in, or debentures of, the company. If so, the report shall contain —

(i) a statement explaining the effect of the arrangements;

(ii) the names of the persons who at any time during that year were —

(A) directors of the company; and

(B) had held (or whose nominees held) shares or debentures acquired in pursuance of the arrangements; and

(c) the following information —

(i) whether or not any director of the company was interested (at the end of the year under report) in shares in (or debentures of) the company or any other body corporate (being the company's subsidiary, holding company or subsidiary of company's holding company). If so, the number and amount of shares in (and debentures of) each body (specifying it) in which he was then interested; and

(ii) whether or not, any director of the company was interested, at the beginning of the year under report (or if he was not then a director, when he became a director) in shares in (or debentures of) the company or any other body corporate (being the company's subsidiary, holding company or subsidiary of company's holding company). If so, the number and amount of shares in (and debentures of) each body (specifying it) in which he was then interested.

[S 6/2015]

(2B) The directors of a company shall state in the report whether since the end of the previous financial year a director of the company has

received or become entitled to receive a benefit (other than a benefit included in the aggregate amount of emoluments received or due and receivable by the directors shown in the accounts; if the company is a holding company, the consolidated accounts in accordance with the applicable accounting standards or the fixed salary of a full-time employee of the company) by reason of a contract made by the company or a related corporation with the director or with a firm of which he is a member, or with a company in which he has a substantial financial interest and, if so, the general nature of the benefit.

[S 6/2015]

(2C) The Minister may prescribe additional information to be provided in the report under this section. The additional information shall be such as considered necessary by the Minister to facilitate understanding of the business of the company (or group of companies of the holding company, as the case may be) by members of the company (or holding company, as the case may be).

[S 6/2015]

(3) If any person being a director of a company fails to take all reasonable steps to comply with the provisions of this section, he is guilty of an offence and liable on conviction to, in respect of each offence, a fine of $5,000 or imprisonment for 2 years:

Provided that a person shall not be sentenced to imprisonment for an offence under this section unless, in the opinion of the Court dealing with the case, the offence was committed wilfully.

Contents of balance sheet

123. (1) Every balance sheet of a company shall contain a summary of the authorised share capital and of the issued share capital of the company, its liabilities and its assets, together with such particulars as are necessary to disclose the general nature of the liabilities and the assets of the company and to distinguish between the amounts respectively of the fixed assets and of the floating assets, and shall state how the values of the fixed assets have been arrived at.

(2) There shall be stated under separate headings in the balance sheet, so far as they are not written off —

(a) the preliminary expenses of the company;

(b) any expenses incurred in connection with any issue of share capital or debentures; and

(c) if it is shown as a separate item in or is otherwise ascertainable from the books of the company, or from any contract for the sale or purchase of any property to be acquired by the company, or from any documents in the possession of the company relating to the stamp duty payable in respect of any such contract or the conveyance of any such property, the amount of the goodwill and of any patents and trade marks as so shown or ascertained.

(3) Where any liability of the company is secured otherwise than by operation of law on any assets of the company, the balance sheet shall include a statement that liability is so secured, but it shall not be necessary to specify in the balance sheet the assets on which the liability is secured.

(4) The provisions of this section are in addition to other provisions of this Act requiring other matters to be stated in balance sheets.

Assets consisting of shares in subsidiary companies to be set out separately in balance sheet

124. Where any of the assets of a company consist of shares in, or amounts owing (whether on account of a loan or otherwise) from a subsidiary company or subsidiary companies, the aggregate amount of those assets, distinguishing shares and indebtedness, shall be set out in the balance sheet of the first mentioned company separately from all its other assets, and where a company is indebted, whether on account of a loan or otherwise, to a subsidiary company or subsidiary companies, the aggregate amount of that indebtedness shall be set out in the balance sheet of that company separately from all its other liabilities.

Balance sheet to include particulars as to subsidiary companies

125. (1) Where a company (in this section referred to as the holding company) holds shares either directly or through a nominee in a subsidiary company or in two or more subsidiary companies, there shall be annexed to the balance sheet of the holding company a statement, signed by the persons by whom in pursuance of section 128 the balance sheet is signed, stating how the profits and losses of the subsidiary company or, where there are two or more subsidiary companies, the aggregate profits and losses of those companies have, so far as they concern the holding company, been dealt

with, in or for the purposes of, the accounts of the holding company, and in particular how and to what extent —

(a) provision has been made for the losses of a subsidiary company either in the accounts of that company or of the holding company or of both; and

(b) losses of a subsidiary company have been taken into account by the directors of the holding company in arriving at the profits and losses of the holding company as disclosed in accounts:

Provided that it shall not be necessary to specify in any such statement the actual amount of the profits or losses of any subsidiary company, or the actual amount of any part of any such profits or losses which has been dealt with in any particular manner.

(2) If in the case of a subsidiary company the auditors' report on the balance sheet of the company does not state without qualification that the auditors have obtained all the information and explanations they have required and that the balance sheet is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them and as shown by the books of the company, the statement which is to be annexed as aforesaid to the balance sheet of the holding company shall contain particulars of the manner in which the report is qualified.

(3) For the purposes of this section, the profits or losses of a subsidiary company mean the profits or losses shown in any accounts of the subsidiary company made up to a date within the period to which the accounts of the holding company relate or if there are no such accounts of the subsidiary company available at the time when the accounts of the holding company are made up, the profits or losses shown in the last previous accounts of the subsidiary company which became available within that period.

(4) If for any reason the directors of the holding company are unable to obtain such information as is necessary for the preparation of the statement aforesaid, the directors who sign the balance sheet shall so report in writing and their report shall be annexed to the balance sheet *in lieu* of the statement.

Meaning of subsidiary company

126. (1) Where the assets of a company consist in whole or in part of shares in another company, whether held directly or through a nominee and whether that other company is a company within the meaning of this Act or not, and —

(a) the amount of the shares so held is at the time when the accounts of the holding company are made up, more than 50 *per cent* of the issued share capital of that other company or such as to entitle the company to more than 50 *per cent* of the voting power in that other company; or

(b) the company has power (not being power vested in it by virtue only of the provisions of a debenture trust deed or by virtue of shares issued to it for the purpose in pursuance of those provisions) directly or indirectly to appoint the majority of the directors of that other company,

that other company shall be deemed to be a subsidiary company within the meaning of this Act, and "subsidiary company" in this Act means a company in the case of which the conditions of this section are satisfied.

(2) Where a company the ordinary business of which includes the lending of money holds shares in another company as security only, no account shall for the purpose of determining under this section whether that other company is a subsidiary company be taken of the shares so held.

Accounts to contain particulars as to loans to, and remuneration of directors etc.

127. (1) The accounts which in pursuance of this Act are to be laid before every company in general meeting shall, subject to the provisions of this section, contain particulars showing —

(a) the amount of any loans which during the period to which the accounts relate have been made either by the company or by any other person under a guarantee from or on a security provided by the company to any director or officer of the company, including any such loans which were repaid during such period;

(b) the amount of any loans made in manner aforesaid to any director or officer at any time before the period aforesaid and outstanding at the expiration thereof; and

(c) the total of the amount paid to the directors as remuneration for their services, inclusive of all fees, percentages or other emoluments, paid to or receivable by them, by or from the company or by or from any subsidiary company.

(2) The provisions of subsection (1) with respect to loans do not apply —

(a) in the case of a company the ordinary business of which includes the lending of money to a loan made by the company in the ordinary course of its business; or

(b) to a loan made by the company to any employee of the company if the loan does not exceed $20,000 and is certified by the directors of the company to have been made in accordance with any practice adopted or about to be adopted by the company with respect to loans to its employees.

(3) The provisions of subsection (1) with respect to the remuneration paid to directors shall not apply in relation to a managing director of the company, and in the case of any other director who holds any salaried employment or office in the company there shall not be required to be included in that total amount any sums paid to him except sums paid by way of directors' fees.

(4) If in the case of any such accounts as aforesaid the requirements of this section are not complied with, it shall be the duty of the auditors of the company by whom the accounts are examined to include in their report on the balance sheet of the company, so far as they are reasonably able to do so, a statement giving the required particulars.

(5) In this section, "emoluments" includes fees, percentages and other payments made or consideration given, directly or indirectly, to a director as such, and the money value of any allowances or perquisites belonging to his office.

Signing of balance sheet

128. (1) Every balance sheet of a company shall be signed on behalf of the board by two of the directors of the company or, if there is only one director, by that director, and the auditors' report shall be attached to the balance sheet, and the report shall be read before the company in general meeting, and shall be open to inspection by any member.

(2) In the case of a banking company, the balance sheet must be signed by the secretary or manager, if any, and where there are more than three directors of the company, by at least three of those directors, and where there are not more than three directors, by all the directors.

(3) If any copy of a balance sheet which has not been signed as required by this section is issued, circulated or published, or if any copy of a balance sheet is issued, circulated or published without having a copy of the auditors' report attached thereto, the company and every director, manager, secretary, or other officer of the company who is knowingly a party to the default, is guilty of an offence and liable on conviction to a fine of $5,000.

Right to receive copies of balance sheets and auditors' report

129. (1) In the case of a company not being a private company —

(a) a copy of every balance sheet including every document required by law to be annexed thereto which is to be laid before the company in general meeting, together with a copy of the auditors' report shall, not less than 7 days before the date of the meeting, be sent to all persons entitled to receive notices of general meetings of the company;

(b) any member of the company, whether he is or is not entitled to have sent to him copies of the company's balance sheets, and any holder of debentures of the company, shall be entitled to be furnished on demand without charge with a copy of the last balance sheet of the company, including every document required by law to be annexed thereto, together with a copy of the auditors' report on the balance sheet.

If default is made in complying with paragraph *(a)*, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a fine of $200, and if, where any person makes a demand for a document with which he is by virtue of paragraph *(b)* entitled

to be furnished, default is made in complying with the demand within 7 days after the making thereof, the company and every director, manager, secretary or other officer of the company who is knowingly a party to the default is guilty of an offence and liable on conviction to a fine of $25 for every day during which the default continues, unless it is proved that person has already made a demand for and been furnished with a copy of the document.

(2) In the case of a company being a private company, any member shall be entitled to be furnished with, within 7 days after he has made a request in that behalf to the company, a copy of the balance sheet and auditors' report at a charge not exceeding 50 cents for every 100 words. If default is made in furnishing such a copy to any member who demands it and tenders to the company the amount of the proper charge therefor, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a default fine.

130. *(Repealed by S 118/2010).*

Appointment and remuneration of auditors

131. (1) Every company shall at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting.

(2) If an appointment of auditors is not made at an annual general meeting, the Court may, on the application of any member of the company, appoint an auditor of the company for the current year.

(3) *(a)* The Clerk of Council** shall publish annually, by notification published in the *Gazette,* a list in two parts containing the names of all persons who are authorised by His Majesty the Sultan and Yang Di-Pertuan in Council* to perform the duties required by this Act to be performed by an auditor, and shall from time to time similarly publish the names of persons added to or removed from any part of the last published annual list by order of His Majesty the Sultan and Yang Di-Pertuan in Council*. The last published annual list as so amended shall be deemed the current authorised list.

* Transferred to the Minister of Finance with effect from 31st December 1988 — *[S 31/1988]*
**Transferred to the Permanent Secretary, Ministry of Finance with effect from 31st December 1998 — *[S 31/1988]*

(b) His Majesty the Sultan and Yang Di-Pertuan in Council* shall not order the insertion of the name of any person in any part of any such list unless he deems him in all respects fit and suitable to be authorised.

(c) (i) His Majesty the Sultan and Yang Di-Pertuan in Council* may in his absolute discretion by order remove the name of any authorised auditor who has ceased to practise in Brunei Darussalam.

(ii) His Majesty the Sultan and Yang Di-Pertuan in Council* may also on any ground which he may deem sufficient, remove the name of any person he may consider unfit or unsuitable to continue to be authorised. In such case, notice shall be given, if practicable, to the person whose name it is proposed to remove and he may, if so required, be heard by His Majesty the Sultan and Yang Di-Pertuan in Council* either in person or by advocate, before such removal is made.

(d) (i) The first part of the current authorised list shall contain the names of persons authorised to audit accounts, kept in English and the second part shall contain the names of persons authorised to audit accounts kept in a language other than English.

(ii) Where the accounts of a company are kept in English, no person shall be appointed auditor unless his name appears in the first part of the current authorised list, and where the accounts of a company are kept in a language other than English, no person shall be appointed auditor unless his name appears in the second part of the current authorised list as a person authorised to audit accounts in such language.

* Transferred to the Minister of Finance with effect from 31st December 1988 — *[S 31/1988]*
**Transferred to the Permanent Secretary, Ministry of Finance with effect from 31st December 1998 — *[S 31/1988]*

(iii) Every company which keeps its accounts partly in English and partly in a language other than English shall have its accounts audited as to that part which is kept in English by a person whose name appears in the first part of the current authorised list and as to that part which is kept in a language other than English by a person whose name appears in the second part of the current authorised list as a person authorised to audit accounts in such language.

(e) Nothing herein shall be deemed to prevent His Majesty the Sultan and Yang Di-Pertuan in Council* authorising the inclusion of a name in both parts of the current authorised list; and nothing herein shall be deemed to require a second auditor for the daily summary in the English language referred to in the proviso in section 121(1)*(i)*.

(f) In this subsection, "person" shall include a firm.

(4) A person, other than a retiring auditor, shall not be capable of being appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a member to the company not less than 14 days before the annual general meeting, and the company shall send a copy of any such notice to the retiring auditor and shall give notice thereof to the members, either by advertisement or in any other mode allowed by articles, not less than 7 days before the annual general meeting:

Provided that if, after notice of the intention to nominate an auditor has been so given, an annual general meeting is called for a date 14 days or less after the notice has been given, the notice, though not given within the time required by this subsection, shall be deemed to have been properly given for the purposes thereof, and the notice to be sent or given by the company may, instead of being sent or given within the time required by this subsection, be sent or given at the same time as the notice of the annual general meeting.

* Transferred to the Minister of Finance with effect from 31st December 1988 — *[S 31/1988]*

(5) Subject as hereinafter provided, the first auditors of the company may be appointed by the directors at any time before the first annual general meeting, and auditors so appointed shall hold office until that meeting:

Provided that —

(a) the company may, at a general meeting of which notice has been served on the auditors in the same manner as on members of the company, remove any such auditors and appoint in their place any other persons being persons who have been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company not less than 7 days before the date of the meeting; and

(b) if the directors fail to exercise their powers under this subsection, the company in general meeting may appoint the first auditors, and thereupon the powers of the directors shall cease.

(6) The directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or auditors, if any, may act.

(7) The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that the remuneration of an auditor appointed before the first annual general meeting or of an auditor appointed to fill a casual vacancy, may be fixed by the directors, and that the remuneration of an auditor appointed by the Court may be fixed by the Court.

(8) The provisions of this section relating to the appointment of auditors do not apply to any company in relation to which the Government has the power to secure, by means of the holding of shares or the possession of voting power in or in relation to that company or by virtue of any powers conferred by the articles of that company, that the affairs of that company are conducted in accordance with its directions.

[S 10/2003]

(9) The accounts of any company to which subsection (8) refers shall be audited annually by —

(a) the Auditor General; or

(b) any person who has been authorised to perform the duties required by this section to be performed by an auditor, who shall be appointed annually by the company:

Provided that where the accounts of such a company have been audited by a person appointed under paragraph *(b)*, they may be verified by the Auditor General.

[S 10/2003]

Disqualification for appointment as auditor

132. None of the following persons shall be qualified for appointment as auditor of a company —

(a) a director or officer of the company;

(b) except where the company is a private company, a person who is a partner of or in the employment of an officer of the company;

(c) a body corporate.

Auditors' report and auditors' right of access to books and right to attend general meetings

133. (1) The auditors shall make a report to the members on the accounts examined by them and on every balance sheet laid before the company in general meeting during their tenure of office, and the report shall state —

(a) whether or not they have obtained all the information and explanations they have required; and

(b) whether, in their opinion, the balance sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them and as shown by the books of the company.

(2) Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company and shall be entitled to require from the directors and officers of the company such

information and explanation as may be necessary for the performance of the duties of the auditors:

Provided that, in the case of a banking company which has branch banks beyond the limits of Brunei Darussalam, it shall be sufficient if the auditor is allowed access to such copies and extracts from such books and accounts of any such branch as have been transmitted to the head office of the company in Brunei Darussalam.

(3) The auditors of a company shall be entitled to attend any general meeting of the company at which any accounts which have been examined or reported on by them are to be laid before the company and to make any statement or explanation they desire with respect to the accounts.

Certain companies exempt from obligation to appoint auditors *[S 62/2014]*

133A. (1) Notwithstanding section 131, a company which is exempt from audit requirements under section 133B or 133C, and its directors, shall be exempt from section 131(1).

(2) Where a company ceases to be so exempt, the company shall appoint a person or persons to be auditor or auditors of the company at any time before the next annual general meeting and the auditors so appointed shall hold office until the conclusion of that meeting.

(3) If default is made in complying with subsection (2), the company and every director of the company who is in default is guilty of an offence and liable on conviction to a fine not exceeding $5,000.

Dormant company exempt from audit requirements *[S 62/2014]*

133B. (1) A company shall be exempt from audit requirements if it has been dormant —

(a) from the time of its formation; or

(b) since the end of the previous financial year.

(2) A company is dormant during a period in which no accounting transaction occurs and the company ceases to be dormant on the occurrence of such a transaction.

(3) For the purposes of subsection (2), there shall be disregarded transactions of a company arising from any of the following —

(a) the taking of shares in the company by a subscriber to the memorandum in pursuance of his undertaking in the memorandum;

(b) the appointment of an auditor under section 131;

(c) the maintenance of a registered office under sections 92 and 93;

(d) the keeping of registers and books under sections 83, 98, 120 and 143;

(e) the payment of any fee specified in the Eighth Schedule or an amount of any fine or penalty paid to the Registrar under Part XI;

(f) other matters as may be prescribed.

(4) Where a company is, at the end of a financial year, exempt from audit requirements under subsection (1) —

(a) a copy of balance sheet of the company, including every document required by law to be annexed thereto to be sent under section 129, need not be audited;

(b) section 129 has effect with the omission of any reference to the auditor's report or a copy of the report;

(c) a copy of an auditor's report need not be laid before the company in a general meeting; and

(d) the annual return of the company to be lodged with the Registrar shall be accompanied by a statement by the directors —

(i) that the company is a company referred to in subsection (1)*(a)* or *(b)* as at the end of the financial year;

(ii) that no notice has been received under subsection (6) in relation to that financial year; and

(iii) as to whether the books of account required by this Act to be kept by the company have been kept in accordance with section 121.

(5) Where a company which is exempt from audit requirements under subsection (1) ceases to be dormant, it shall thereupon cease to be so exempt; but it shall remain so exempt in relation to accounts for the financial year in which it was dormant throughout.

(6) Member or members holding in the aggregate —

(a) not less than 5 *per cent* in nominal value of a company's issued share capital or any class of it; or

(b) if the company does not have a share capital, not less than 5 *per cent* in number of the members of the company,

may, by notice in writing to the company during a financial year but not later than one month before the end of that year, require the company to obtain an audit of its accounts for that year.

(7) Where a notice is given under subsection (6), the company is not entitled to the exemption under subsection (1) in respect of the financial year to which the notice relates.

(8) In this section, "accounting transaction" means a transaction the record of which is in the books of account required to be kept under section 121.

Private company exempt from audit requirements *[S 62/2014]*

133C. (1) A company, being a private company, shall be exempt from audit requirements in respect of a financial year if —

(a) its revenue in that year does not exceed $1,000,000;

(b) the beneficial interest in its shares is not held, directly or indirectly, by any corporation; and

(c) it consists of not more than twenty members.

(2) For a period which is an exempt private company's financial year but is less than 12 months, the amount of revenue under subsection (1) shall be proportionately adjusted.

(3) Section 133B(4), (6) and (7) apply, with the necessary modifications, to an exempt private company so exempt.

Registrar may require company exempt from audit requirements to lodge audited accounts *[S 62/2014]*

133D. Notwithstanding sections 133B and 133C, the Registrar may, if he is satisfied that there has been a breach of any provision of section 121 or 122 or that it is otherwise in the public interest to do so, by notice in writing to a company exempt under section 133B or 133C, require that company to lodge with him, within such time as may be specified in that notice —

(a) its accounts, duly audited by the auditor or auditors of the company or, where none has been appointed, an auditor or auditors to be appointed by the directors of the company for this purpose; and

(b) an auditor's report referred to in section 133 in relation to those accounts prepared by the auditor or auditors of the company.

INSPECTION

Investigation of affairs of company by inspectors

134. (1) The Court may appoint one or more competent inspectors to investigate the affairs of a company and to report thereon in such manner as the Court may direct —

(a) in the case of a banking company having a share capital, on the application of members holding not less than one-third of the shares issued;

(b) in the case of any other company having a share capital, on the application of members holding not less than one-tenth of the shares issued;

(c) in the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members.

(2) The application shall be supported by such evidence as the Court may require for the purpose of showing that the applicants have good reason for, and are not actuated by malicious motives in, requiring the investigation, and the Court may, before appointing an inspector, require the applicants to give security to an amount not exceeding $10,000 for payment of the costs of the inquiry.

(3) It shall be the duty of all officers and agents of the company to produce to the inspectors all books and documents in their custody or power.

(4) An inspector may examine on oath the officers and agents of the company in relation to its business, and may administer an oath accordingly.

(5) If any officer or agent of the company refuses to produce to the inspectors any book or document which it is his duty under this section so to produce, or refuses to answer any question which is put to him by the inspectors with respect to the affairs of the company, the inspectors may certify the refusal under their hands to the Court, and the Court may thereupon inquire into the case, and, after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, punish the offender in like manner as if he had been guilty of contempt of the Court.

(6) On the conclusion of the investigation, the inspectors shall report their opinion to the Court which shall direct that a copy of the report be forwarded to the registered office of the company. A further copy shall, at the request of the applicants for the investigation, be delivered to them. The report shall be written or printed, as the Court may direct.

Proceedings on report by inspectors

135. (1) If from any report made under section 134 it appears to the Court that any person has been guilty of any offence in relation to the company for which he is criminally liable, the Court may direct that the matter shall be referred to the Public Prosecutor.

(2) If, where any matter is referred to the Public Prosecutor under this section, he considers that the case is one in which a prosecution ought to be instituted and, further, that it is desirable in the public interest that the proceedings in the prosecution should be conducted by him, he shall institute proceedings accordingly, and it shall be the duty of all officers and agents of the company, past and present (other than the defendant in the proceedings), to give to him all assistance in connection with the prosecution which they are reasonably able to give.

For the purposes of this subsection, "agents" in relation to a company shall be deemed to include the bankers and solicitors of the company and any persons employed by the company as auditors, whether those persons are or are not officers of the company.

(3) The expenses of and incidental to an investigation under section 134 (in this subsection referred to as the expenses) shall be defrayed as follows —

(a) where as a result of the investigation a prosecution is instituted by the Public Prosecutor, the expenses shall be defrayed by the revenues of Brunei Darussalam;

(b) in any other case, the expenses shall be defrayed by the company unless the Court thinks proper to direct, as the Court is hereby authorised to do, that they shall either be paid by the applicants or in part by the company and in part by the applicants:

Provided that —

(i) if the company fails to pay the whole or any part of the sum which it is liable to pay under this subsection, the applicants shall make good the deficiency up to the amount by which the security given by them under section 134 exceeds the amount, if any, which they have under this subsection been directed by the Court to pay; and

(ii) any balance of the expenses not defrayed either by the company or the applicants shall be defrayed by the revenues of Brunei Darussalam.

Definitions *[S 26/1998]*

135A. For the purposes of sections 135A to 135N —

"body corporate" includes a company incorporated elsewhere than in Brunei Darussalam;

"company" includes any company liable to be wound up under this Act, any body corporate and any partnership or association wheresoever established.

Appointment of inspectors *[S 26/1998]*

135B. (1) The Minister of Finance may, if he considers it expedient in the public interest, appoint one or more inspectors to investigate the affairs of a company and to report on them in such manner as he may direct.

(2) Inspectors may be appointed under subsection (1) on terms that any report (or any part of it) they may make is not for publication.

Inspectors' powers during investigation *[S 26/1998]*

135C. (1) If inspectors appointed under section 135B think it necessary for the purposes of their investigation to investigate also the affairs of another company or the Minister of Finance so directs, they have power to do so; and they shall report on the affairs of the other company so far as they think that the results of their investigation of its affairs are relevant to the investigation of the affairs of the company mentioned in section 135B.

(2) If inspectors appointed under section 135B think it necessary for the purposes of their investigation to investigate also the affairs of any other person who the inspectors consider has had dealings with any company mentioned in section 135B or 135C, or is or has been connected with any such company in such a manner as the inspectors consider warrants investigation, or if the Minister of Finance directs, they have power to do so; and they shall report on the affairs of that person so far as they think that the results of their investigation of his affairs are relevant to the investigation of the affairs of the company mentioned in section 135B or 135C.

Production of documents and evidence to inspector *[S 26/1998]*

135D. (1) Where inspectors are appointed under section 135B, it is the duty of each person mentioned in subsection (4) —

(a) to produce to the inspectors all documents of, or relating to, the company referred to in section 135B or 135C(1) or the person referred to in section 135C(2), which are in his possession, custody or power;

(*b*) to attend before the inspectors when required to do so;

(c) otherwise to give the inspectors all assistance in connection with the investigation which he is reasonably able to give.

(2) If the inspectors consider that any of the persons mentioned in subsection (4) is or may be in possession of information relating to a matter which they believe to be relevant to the investigation, they may require him —

(a) to produce to them any documents in his custody or power relating to that matter;

(b) to attend before them; and

(c) otherwise to give them all assistance in connection with the investigation which he is reasonably able to give,

and it is the duty of that person to comply with the requirement.

(3) An inspector may, for the purposes of the investigation, examine any person on oath and may administer an oath accordingly.

(4) The persons referred to in subsections (1) and (2) are —

(a) any person who is or was a director, controller, manager, employee, agent, banker, auditor, legal adviser or shareholder of the company;

(b) any other person who the inspectors consider is or may be in possession of information relating to a matter which the inspectors believe to be relevant to the investigation.

(5) Any answer given by a person to a question put to him in exercise of powers conferred by this section may be used in evidence against him.

(6) In this section and section 135K, "documents" include —

(a) anything in which information of any description is recorded in any form, whether in a manner intelligible to the senses or capable of being made intelligible by the use of equipment;

(b) any database or electronic information,

and in relation to information recorded otherwise than in legible form, the power to require its production includes power to require the production of a copy of the information in legible form.

Obstruction of inspectors *[S 26/1998]*

135E. If any person —

(a) fails to comply with his duty under section 135D(1)*(a)* or *(c)*;

(b) refuses to comply with a requirement under section 135D(1)*(b)* or (2); or

(c) refuses to answer any question put to him by the inspectors for the purposes of the investigation,

the inspectors may certify that fact in writing to the Court, and the Court may thereupon inquire into the case, and may punish the offender in like manner as if he had been guilty of contempt of Court.

[S 118/2010]

Report of inspectors *[S 26/1998]*

135F. (1) The inspectors shall report to the Minister of Finance as the Minister of Finance may direct.

(2) Any such report shall be written or printed as the Minister of Finance may direct.

Power to bring civil proceedings on behalf of company *[S 26/1998]*

135G. (1) If from any report made or information obtained under section 135D, 135F or 149D, it appears to the Minister of Finance that any civil proceedings ought, in the public interest, to be brought by any company,

he may himself bring such proceedings in the name of and on behalf of the company.

(2) The Minister of Finance shall have the power to indemnify the company against any costs or expenses incurred by it in connection with the proceedings brought under this section.

Expenses of investigating affairs of company *[S 26/1998]*

135H. (1) The expenses of an investigation under any of the powers conferred by sections 135B to 135F shall be defrayed in the first instance by the Minister of Finance, but he may recover those expenses from the persons liable in accordance with this section. There shall be treated as expenses of the investigation, in particular, such reasonable sums as the Minister of Finance may determine in respect of general staff costs and overheads.

(2) A person who is convicted on a prosecution instituted as a result of the investigation, or is ordered to pay the whole or any part of the costs of the proceedings brought under section 135G, may in the same proceedings, be ordered to pay those expenses to such extent as may be specified in the order.

(3) A company in whose name proceedings are brought under section 135G is liable in respect of any costs or expenses incurred in connection with those proceedings to the amount or value of any sums or property recovered by it as a result of those proceeding; any amount for which a company is liable under this subsection is a first charge on the sums or property recovered.

For the purposes of this section, any costs or expenses incurred by the Minister of Finance in or in connection with proceedings brought under section 135G are to be treated as expenses of the investigation giving rise to the proceedings.

Power to investigate company ownership *[S 26/1998]*

135I. Where the Minister of Finance appoints inspectors under section 135B, the inspectors may, if directed by the Minister of Finance, investigate and report on the membership of any company, and otherwise with respect to the company, for the purposes of determining the true persons who are or have been financially interested in the success or failure (real or apparent) of the company or able to control or materially to influence its policy.

Provisions applicable on investigation under section 135I *[S 26/1998]*

135J. For the purposes of an investigation under section 135I, sections 135C to 135F apply with the necessary modifications of references to the affairs of the company or to those of any other company or person.

Entry and search of premises *[S 26/1998]*

135K. (1) The Court may issue a warrant under this section if satisfied on information on oath given by or on behalf of the Minister of Finance or by a person appointed or authorised to exercise powers under sections 135B and 135C, that there are reasonable grounds for believing that there are, on any premises, documents whose production has been required and which have not been produced in compliance with that requirement.

(2) The Court may also issue a warrant under this section if satisfied on information on oath given by or on behalf of the Minister of Finance or by a person appointed or authorised to exercise powers under sections 135B and 135C that —

(a) there are reasonable grounds for believing that an offence has been committed and that there are, on any premises, documents relating to whether the offence has been committed;

(b) the Minister of Finance or the person so an appointed or authorised, has power to require the production of the documents under section 135D; and

(c) there are reasonable grounds for believing that, if production was so required, the documents would not be produced but would be removed from the premises, hidden, tampered with or destroyed.

(3) A warrant under the section shall authorise a police officer —

(a) to enter the premises specified in the information, using such force as is reasonably necessary for the purpose;

(b) to search the premises and take possession of any documents appearing to be such documents as are mentioned in subsections (1) and (2), or take, in relation to any such documents, any other steps which may appear to be necessary for preserving them or preventing interference with them;

(c) to take copies of any such documents; and

(d) to require any person named in the warrant to provide an explanation of them or to state where they may be found.

(4) If in the case where a warrant is issued under subsection (2), the Court is satisfied on information on oath that there are reasonable grounds for believing that there are also, on the premises, other documents relevant to the investigation, the warrant shall also authorise actions mentioned in subsection (3) to be taken in relation to such documents.

(5) Any person who intentionally obstructs the exercise of any rights conferred by a warrant issued under this section or fails without reasonable excuse to comply with any requirement imposed in accordance with subsection (3)(*d*) is guilty of contempt of Court.

Punishment for furnishing false information *[S 26/1998]*

135L. A person who, in purported compliance with a requirement imposed under section 135D to provide an explanation or make a statement, provides or makes an explanation which he knows to be false in a material particular or recklessly provides or makes an explanation or statement which is also false, is guilty of contempt of Court.

Disclosure of information by Minister of Finance *[S 26/1998]*

135M. The Minister of Finance may, if he thinks fit, authorise or require an inspector appointed under section 135B to disclose any information to any person for such purpose as the Minister of Finance may direct.

Reference to Public Prosecutor *[S 26/1998]*

135N. (1) If, from any report made under section 135F, it appears to the inspectors that any person has been guilty of any offence in relation to the company for which he is criminally liable, the inspectors shall refer the matter to the Public Prosecutor.

(2) If, where any matter is referred to the Public Prosecutor under this section, he considers that the case is one in which a prosecution ought to be instituted and further, that it is desirable in the public interest that the proceedings in the prosecution should be conducted by him, he shall institute proceedings accordingly.

Power of company to appoint inspectors

136. (1) A company may by special resolution appoint inspectors to investigate its affairs.

(2) Inspectors so appointed shall have the same powers and duties as inspectors appointed by the Court except that, instead of reporting to the Court, they shall report in such manner and to such persons as the company in general meeting may direct.

(3) If any officer or agent of the company refuses to produce to the inspectors any book or document which it is his duty under this section so to produce or refuses to answer any question which is put to him by the inspectors with respect to the affairs of the company, he shall be liable to be proceeded against in the same manner as if the inspectors had been inspectors appointed by the Court.

Report of inspectors to be evidence

137. A copy of the report of any inspectors appointed under this Act, authenticated by the seal of the company whose affairs they have investigated, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in the report.

DIRECTORS AND MANAGERS

Number of directors

138. (1) Every company registered after 1st January 1957, being the date of commencement of this Act, shall have at least two directors.

(2) One of the two directors or, where there are more than two directors, at least two of them shall be ordinarily resident in Brunei Darussalam.

[S 118/2010]

(2A) No person other than an individual who has attained the age of 18 years and who is otherwise of full legal capacity shall be a director of a company.

[S 118/2010]

(2B) A company shall comply with the requirements of subsection (2) within 6 months of 31st December 2010, being the date of commencement of the Companies Act (Amendment) Order, 2010 (S 118/2010).

[S 118/2010]

(3) If default is made in complying with this section, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a default fine.

Restrictions on appointment or advertisement of director

139. (1) A person shall not be capable of being appointed director of a company by the articles, and shall not be named as a director or proposed director of a company in a prospectus issued by or on behalf of the company, or as proposed director of an intended company in a prospectus issued in relation to that intended company, or in a statement *in lieu* of prospectus delivered to the Registrar by or on behalf of a company, unless, before the registration of the articles or the publication of the prospectus, or the delivery of the statement *in lieu* of prospectus, as the case may be, he has by himself or by his agent authorised in writing —

(a) signed and delivered to the Registrar for registration a consent in writing to act as such director; and

(b) either —

(i) signed the memorandum for a number of shares not less than his qualification, if any;

(ii) taken from the company and paid or agreed to pay for his qualification share, if any;

(iii) signed and delivered to the Registrar for registration an undertaking in writing to take from the company and pay for his qualification shares, if any; or

(iv) made and delivered to the Registrar for registration a statutory declaration to the effect that a number of shares, not less than his qualification, if any, are registered in his name.

(2) Where a person has signed and delivered as aforesaid an undertaking to take and pay for his qualification shares, he shall, as regards

those shares, be in the same position as if he had signed the memorandum for that number of shares.

(3) On the application for registration of the memorandum and articles of a company, the applicant shall deliver to the Registrar a list of the persons who have consented to be directors of the company and, if this list contains the name of any person who has not so consented, the applicant shall be liable to a fine of $2,000.

(4) This section does not apply to —

(a) a company not having a share capital;

(b) a private company;

(c) a company which was a private company before becoming a public company; or

(d) a prospectus issued by or on behalf of a company after the expiration of one year from the date on which the company was entitled to commence business.

Qualification of director or manager

140. (1) Without prejudice to the restrictions imposed by section 139, it shall be the duty of every director who is by the articles of the company required to hold a specified share qualification and who is not already qualified, to obtain his qualification within 2 months after his appointment or such shorter time as may be fixed by the articles.

(2) For the purposes of any provision in the articles requiring a director or manager to hold a specified share qualification, the bearer of a share warrant shall not be deemed to be the holder of the shares specified in the warrant.

(3) The office of director of a company shall be vacated if the director does not within 2 months from the date of his appointment or within such shorter time as may be fixed by the articles, obtain his qualification, or if after the expiration of the said period or shorter time he ceases at any time to hold his qualification.

(4) A person vacating office under this section shall be incapable of being re-appointed director of the company until he has obtained his qualification.

(5) If, after the expiration of the said period or shorter time, any unqualified person acts as a director of the company, he shall be liable to a fine of $50 for every day between the expiration of the said period or shorter time or the day on which he ceased to be qualified, as the case may be, and the last day on which it is proved that he acted as a director.

Provisions as to undischarged bankrupts acting as directors

141. (1) If any person being an undischarged bankrupt act as director of, or directly or indirectly takes part in or is concerned in the management of, any company except with the leave of the Court by which he was adjudged bankrupt, he is guilty of an offence and liable on conviction to a fine of $5,000 and imprisonment for one year:

Provided that a person shall not be guilty of an offence under this section by reason that he, being an undischarged bankrupt, has acted as director of, or taken part or been concerned in the management of, a company, if at the commencement of this Act he was acting as director of, or taking part or being concerned in the management of, that company and has continuously so acted, taken part or been concerned since that date and the bankruptcy was prior to that date.

(2) The leave of the Court for the purpose of this section shall not be given unless notice of intention to apply therefor has been served on the Official Receiver and it shall be the duty of the Official Receiver, if he is of opinion that it is contrary to the public interest that any such application should be granted, to attend on the hearing of and oppose the granting of the application.

(3) In this section —

"company" includes an unregistered company and a company incorporated outside Brunei Darussalam which has an established place of business within Brunei Darussalam;

"Official Receiver" means the Official Receiver in bankruptcy.

Disqualification of unfit directors of insolvent companies *[S 118/2010]*

141A. (1) The Court may —

(a) on the application of the Minister of Finance or the Official Receiver as provided for in subsection (9)*(a)*; and

(b) on being satisfied as to the matters referred to in subsection (2),

make an order disqualifying a person specified in the order from being a director or in any way, whether directly or indirectly, being concerned in, or take part in, the management of a company during such period not exceeding 5 years after the date of the order as is specified in the order (referred to in this section as a disqualification order).

(2) The Court shall make a disqualification order under subsection (1) if it is satisfied that —

(a) the person against whom the order is sought has been given not less than 14 days' notice of the application; and

(b) (i) that person is or has been a director of a company which has at any time gone into liquidation (whether while he was a director or within 3 years of his ceasing to be a director) and was insolvent at that time; and

(ii) his conduct as director of that company either taken alone or taken together with his conduct as a director of any other company or companies makes him unfit to be a director of or in any way, whether directly or indirectly, be concerned in, or take part in, the management of a company.

(3) If in the case of a person who is or has been a director of a company which is —

(a) being wound up by the Court, it appears to the Official Receiver or to the liquidator (if he is not the Official Receiver); or

(b) being wound up otherwise than as mentioned in paragraph *(a)*, it appears to the liquidator,

that the conditions mentioned in subsection (2)*(b)* are satisfied as respects that person, the Official Receiver or the liquidator, as the case may be, shall immediately report the matter to the Minister of Finance.

(4) The Minister of Finance may require the Official Receiver or the liquidator or the former liquidator of a company —

(a) to furnish him with such information with respect to any person's conduct as a director of the company; and

(b) to produce and permit inspection of such books, papers and other records relevant to that person's conduct as such a director,

as the Minister of Finance may reasonably require for the purpose of determining whether to exercise, or of exercising, any of his functions under this section; and if default is made in complying with that requirement, the Court may, on the application of the Minister of Finance, make an order requiring that person to make good the default within such time as is specified in the order.

(5) For the purposes of this section —

(a) a company has gone into liquidation —

(i) if it is wound up by the Court, on the date of the filing of the winding up application;

(ii) in any other case, on the date of the passing of the resolution for the voluntary winding up; and

(b) a company was insolvent at the time it has gone into liquidation if it was unable to pay its debts within the meaning of that expression in section 163,

and references in this section to a person's conduct as a director of any company or companies include, where any of those companies have become insolvent, references to that person's conduct in relation to any matter connected with or arising out of the insolvency of that company.

(6) In deciding whether a person's conduct as a director of any particular company or companies make him unfit to be concerned in, or take part in, the management of a company as is mentioned in subsection (2)*(b)*,

the Court shall in relation to his conduct as a director of that company or, as the case may be, each of those companies have regard, generally to the matters referred to in paragraph *(a)*, and, in particular, to the matters referred to in paragraph *(b)*, notwithstanding that the director has not been convicted or may be criminally liable in respect of any of these matters —

(a) (i) as to whether there has been any misfeasance or breach of any fiduciary or other duty by the director in relation to the company;

(ii) as to whether there has been any misapplication or retention by the director of, or any conduct by the director giving rise to an obligation to account for, any money or other property of the company;

(iii) as to the extent of the director's responsibility for any failure by the company to comply with sections 88, 89(1), 90(1), 95, 96, 98, 107, 121 and 122; and

(b) (i) as to the extent of the director's responsibility for the causes of the company becoming insolvent;

(ii) as to the extent of the director's responsibility for any failure by the company to supply any goods or services which have been paid for (in whole or in part);

(iii) as to the extent of the director's responsibility for the company entering into any transaction liable to be set aside under section 167;

(iv) as to whether the causes of the company becoming insolvent are attributable to its carrying on business in a particular industry where the risk of insolvency is generally recognised to be higher.

(7) The Minister of Finance may, by notification published in the *Gazette*, amend any of the matters referred to in subsection (6) and that notification may contain such transitional provisions as may appear to the Minister of Finance to be necessary or expedient.

(8) In this section, "company" includes a corporation and a company incorporated outside Brunei Darussalam but does not include a partnership or association to which Part VIII applies.

(9) *(a)* In the case of a person who is or has been a director of a company which has gone into liquidation and is being wound up by the Court, an application under this section shall be made by the Official Receiver, but in any other case an application shall be made by the Minister of Finance.

(b) On a hearing of an application under this section —

(i) the Minister of Finance or the Official Receiver, as the case may be, shall appear and call the attention of the Court to any matter which appears to him to be relevant (and for this purpose the Minister of Finance may be represented) and may give evidence or call witnesses; and

(ii) the person against whom an order is sought may appear and himself give evidence or call witnesses.

(10) This section does not apply unless the company mentioned in subsection (2)*(b)* has gone into insolvent liquidation on or after 31st December 2010, being the date of commencement of the Companies Act (Amendment) Order, 2010 (S 118/2010) and the conduct to which the Court shall have regard shall not include conduct as a director of a company that has gone into liquidation before that date.

(11) A person who acts as Judicial Manager, Executive Manager, receiver or receiver manager shall not be liable to have a disqualification order made against him in respect of acts done in his capacity as Judicial Manager, Executive Manager, receiver or receiver manager, as the case may be.

(12) Any person who acts in contravention of a disqualification order made under this section is guilty of an offence and liable on conviction to a fine not exceeding $10,000, imprisonment for a term not exceeding 2 years or both.

(13) Nothing in this section shall prevent a person who is disqualified pursuant to an order made under subsection (1) from applying for leave of the Court to be concerned in or take part in the management of a company.

(14) On the hearing of an application made under subsection (13) or (15), the Minister of Finance or the Official Receiver shall appear (and for this purpose the Minister may be represented) and call attention of the Court to any matter which appears to him to be relevant to the application and may himself give evidence or call witnesses.

(15) Any right to apply for leave of the Court to be concerned or take part in the management of a company that was subsisting immediately before 31st December 2010, being the date of commencement of the Companies Act (Amendment) Order, 2010 (S 118/2010) shall, after that date, be treated as subsisting by virtue of the corresponding provision made under this section.

Disqualification of directors of companies wound up on grounds of national security or interest *[S 118/2010]*

141B. (1) Subject to subsections (2) and (3), where a company is ordered to be wound up by the Court on the ground that it is being used for purposes against national security or interest, the Court may, on the application of the Minister of Finance, make an order (referred to in this section as a disqualification order) disqualifying any person who is a director of that company from being a director or in any way, directly or indirectly, being concerned in, or from taking part in, the management of any company or company incorporated outside Brunei Darussalam for a period of 3 years from the date of the making of the winding up order.

(2) The Court shall not make a disqualification order against any person under subsection (1) unless the Court is satisfied that the person against whom the order is sought has been given not less than 14 days' notice of the Minister of Finance's application for the order.

(3) The Court shall not make a disqualification order against any person under subsection (1) if such person proves to the satisfaction of the Court that —

(a) the company had been used for purposes against national security or interest without his consent or connivance; and

(b) he had exercised such diligence to prevent the company from being so used as he ought to have exercised having regard to the nature of his function in that capacity and to all the circumstances.

(4) Any person who acts in contravention of a disqualification order made under subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding $10,000, imprisonment for a term not exceeding 2 years or both.

(5) In this section, "company incorporated outside Brunei Darussalam" means a company incorporated outside Brunei Darussalam to which Part IX applies.

Disqualification to act as director on conviction of certain offences *[S 118/2010]*

141C. (1) Where a person is convicted (whether in Brunei Darussalam or elsewhere) of any offence involving fraud or dishonesty punishable with imprisonment for 3 months or more, he shall be subject to the disqualifications provided in subsection (3).

(2) Where a person is convicted in Brunei Darussalam of —

(a) any offence in connection with the formation or management of a corporation; or

(b) any offence under section 259,

the Court may make a disqualification order in addition to any other sentence imposed.

(3) A person who is disqualified under subsection (1) or who has had a disqualification order made against him under subsection (2) shall not act as a director of a company or of a company incorporated outside Brunei Darussalam to which Part IX applies nor shall he take part, whether directly or indirectly, in the management of such a company or company incorporated outside Brunei Darussalam.

(4) *(a)* Where a disqualified person has not been sentenced to imprisonment, the disqualifications in subsection (3) shall take effect upon conviction and shall continue for a period of 5 years or for such shorter period as the Court may order under subsection (2).

(b) Where a disqualified person is sentenced to imprisonment, the disqualifications in subsection (3) shall take effect upon

conviction and shall continue for a period of 5 years after his release from prison.

(5) A person who acts in contravention of a disqualification under this section is guilty of an offence and liable on conviction to a fine not exceeding $10,000, imprisonment for a term not exceeding 2 years or both.

(6) An application for leave to act as a director of a company or of a company incorporated outside Brunei Darussalam to which Part IX applies or to take part, whether directly or indirectly, in the management of such a company or company incorporated outside Brunei Darussalam may be made by a person against whom a disqualification order has been made upon that person giving the Minister of Finance not less than 14 days' notice of his intention to apply for such leave.

(7) On the hearing of any application under this section, the Minister of Finance may be represented at the hearing and may oppose the granting of the application.

(8) The High Court may make a disqualification order under this section.

(9) Any right to apply for leave of the Court to be a director or promoter or to be concerned or take part in the management of a company that was subsisting immediately before 31st December 2010, being the date of commencement of the Companies Act (Amendment) Order, 2010 (S 118/2010) shall on or after that date be treated as subsisting by virtue of the corresponding provision made under this section.

Disqualification under S 117/2010 *[S 118/2010]*

141D. Any person who is subject to a disqualification or disqualification order under section 34, 35 or 36 of the Limited Liability Partnerships Order, 2010 shall not act as director of, or in any way, whether directly or indirectly, take part in or be concerned in the management of, a corporation during the period of the disqualification or disqualification order.

Duty and liability of officers *[S 118/2010]*

141E. (1) A director shall act honestly and use reasonable diligence in the discharge of the duties of his office.

(2) An officer or agent of a company shall not make improper use of any information acquired by virtue of his position as an officer or agent of the company to gain, directly or indirectly, an advantage for himself or for any other person or to cause detriment to the company.

(3) An officer or agent who commits a breach of any of the provisions of this section —

(a) is liable to the company for any profit made by him or for any damage suffered by the company as a result of the breach of any of those provisions; and

(b) is guilty of an offence and liable on conviction to a fine not exceeding $5,000 or imprisonment for a term not exceeding one year.

(4) This section is in addition to and not in derogation of any other written law or rule of law relating to the duty or liability of directors or officers of a company.

(5) In this section —

"agent" includes a banker, solicitor or auditor of the company and any person who at any time has been a banker, solicitor or auditor of the company;

"officer" includes a person who at any time has been an officer of the company.

Powers of directors *[S 118/2010]*

141F. (1) The business of a company shall be managed by or under the direction of the directors.

(2) The directors may exercise all the powers of a company except any power that this Act or the memorandum and articles of the company require the company to exercise in general meeting.

Use of information and advice *[S 118/2010]*

141G. (1) Subject to subsection (2), a director of a company may, when exercising powers or performing duties as a director, rely on reports,

statements, financial data and other information prepared or supplied, and on professional or expert advice given by —

(a) an employee of the company whom the director believes on reasonable grounds to be reliable and competent in relation to the matters concerned;

(b) a professional adviser or an expert in relation to matters which the director believes on reasonable grounds to be within such person's professional or expert competence; or

(c) any other director or any committee of directors upon which the director did not serve in relation to matters within that other director's or committee's designated authority.

(2) Subsection (1) applies to a director only if the director —

(a) acts in good faith;

(b) makes proper inquiry where the need for inquiry is indicated by the circumstances; and

(c) has no knowledge that such reliance is unwarranted.

Validity of acts of directors

142. The acts of a director or manager shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.

Register of directors

143. (1) Every company shall keep at its registered office a register of its directors or managers containing with respect to each of them the following particulars —

(a) in the case of an individual, his present name and surname, any former name or surname, his usual residential address, his nationality and, if that nationality is not the nationality of origin, his nationality of origin and his business occupation, if any, or, if he has no business occupation but holds any other directorship or directorships, particulars of that directorship or of some one of those directorships; and

[S 62/2014]

(b) in the case of a corporation, its corporate name and registered or principal office.

(2) The company shall send to the Registrar a return in such form as the Registrar may determine —

(a) forthwith from the date of appointment of the first directors of the company, the particulars specified in the register;

(b) one month from the date of any change among its directors or in any of the particular contained in the register, a notification of such change.

[S 62/2014]

(3) The register to be kept under this section shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than 2 hours in each day be allowed for inspection) be open to the inspection of any member of the company without charge and of any other person on payment of $1 or such less sum as the company may prescribe, for each inspection.

(4) If any inspection required under this section is refused or if default is made in complying with subsection (1) or (2), the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a default fine.

(5) In the case of any such refusal, the Court may by order compel an immediate inspection of the register.

(6) For the purposes of this section, a person in accordance with whose directions or instructions the directors of a company are accustomed to act shall be deemed to be a director and officer of the company.

Limited company may have directors with unlimited liability

144. (1) In a limited company the liability of the directors or managers, or of the managing director, may, if so provided by the memorandum, be unlimited.

(2) In a limited company in which the liability of a director or manager is unlimited, the directors or managers of the company, if any, and the members who proposes a person for election or appointment to the office of director or manager shall add to that proposal a statement that the liability of the person holding that office will be unlimited, and the promoters, directors, managers and secretary, if any, of the company or one of them shall, before the person accepts the office or acts therein, give him notice in writing that his liability will be unlimited.

(3) If any director, manager or proposer makes default in adding such a statement, or if any promoter, director, manager or secretary makes default in giving such a notice, he is guilty of an offence and liable on conviction to a fine of $1,000, and shall also be liable for any damage which the person so elected or appointed may sustain from the default, but the liability of the person elected or appointed shall not be affected by the default.

Special resolution of limited company making liability of directors unlimited

145. (1) A limited company, if so authorised by its articles, may by special resolution, alter its memorandum so as to render unlimited the liability of its directors, managers or of any managing director.

(2) Upon the passing of any such special resolution, the provisions thereof shall be as valid as if they had been originally contained in the memorandum.

Register of directors' shareholdings *[S 6/2015]*

145A. (1) A company shall keep a register showing with respect to each director of the company particulars of —

(a) shares in that company or in a related corporation, being shares of which the director is a registered holder or in which he has an interest and the nature and extent of that interest;

(b) debentures of or participatory interests made available by the company or a related corporation which are held by the director or in which he has an interest and the nature and extent of that interest;

(c) rights or options of the director, or of the director and another person, or other persons, in respect of the acquisition or disposal of shares in the company or a related corporation; and

(d) contracts to which the director is a party or under which he is entitled to a benefit, being contracts under which a person has a right to call for or to make delivery of shares in the company or in a related corporation.

(2) A company need not show, in its register with respect to a director, particulars of shares in a related corporation that is a wholly-owned subsidiary of the company or of another corporation.

(3) A company that is a wholly-owned subsidiary of another company shall be deemed to have complied with this section in relation to a director who is a director of that other company if the particulars required by this section to be shown in the register of the first-mentioned company with respect to the director are shown in the register of the second-mentioned company.

(4) For the purposes of subsections (2) and (3), a company is a wholly-owned subsidiary of another company if none of the members of the first-mentioned company is a person other than —

(a) the second-mentioned company;

(b) a nominee of the second-mentioned company;

(c) a subsidiary of the second-mentioned company being a subsidiary none of the members of which is a person other than the second-mentioned company or a nominee of the second-mentioned company; or

(d) a nominee of such a subsidiary.

(5) A company shall, within 3 days after receiving notice from a director under section 147A(1)*(a)*, enter in its register in relation to the director the particulars referred to in subsection (1) including the number and description of shares, debentures, participatory interests, rights, options and contracts to which the notice relates and in respect of shares, debentures, participatory interests, rights or options acquired or contracts entered into after he became a director —

(a) the price or other consideration for the transaction, if any, by reason of which an entry is required to be made under this section; and

(b) the date of —

(i) the agreement for the transaction or, if it is later, the completion of the transaction; or

(ii) where there was no transaction, the occurrence of the event by reason of which an entry is required to be made under this section.

(6) A company shall, within 3 days after receiving a notice from a director under section 147A(1)*(b)*, enter in its register the particulars of the change referred to in the notice.

(7) A company is not, by reason of anything done under this section, to be taken for any purpose to have notice of or to be put upon inquiry as to the right of a person or in relation to a share in debenture of a participatory interest made available by the company.

(8) A company shall, subject to this section, keep its register at the registered office of the company and the register shall be open for inspection by a member of the company without charge and by any other person on payment for each inspection of a sum of $3 or such lesser sum as the company requires.

(9) A person may request a company to furnish him with a copy of its register or any part thereof on payment in advance of a sum of $1 or such lesser sum as the company requires for every page or part thereof required to be copied and the company shall send the copy to that person within 21 days or such longer period as the Registrar thinks fit after the day on which the request is received by the company.

(10) The Registrar may by notice in writing require a company to send to him within such time as may be specified in the notice a copy of its register or any part thereof.

(11) A company shall produce its register at the commencement of each annual general meeting of the company and keep it open and accessible during the meeting to all persons attending the meeting.

(12) It is a defence to a prosecution for failing to comply with subsection (1) or (5) in respect of particulars relating to a director if the defendant proves that the failure was due to the failure of the director to comply with section 147 with respect to those particulars.

(13) In this section —

(a) a reference to a participatory interest is a reference to a unit in a collective investment scheme referred to in Part IX of the Securities Markets Order, 2013 (S 59/2013); and

(b) a reference to a person who holds or acquires shares, debentures or participatory interests or an interest in shares, debentures or participatory interests includes a reference to a person who, under an option, holds or acquires a right to acquire or dispose of a share, debenture or participatory interest or an interest in a share, debenture or participatory interest.

(14) For the purposes of this section —

(a) a director of a company shall be deemed to hold or have an interest or a right in or over any shares or debentures if a spouse of the director (not being a director thereof) holds or has an interest or a right in or over any shares or debentures or an infant son or infant daughter of that director (not being himself or herself a director) holds or has an interest in shares or debentures; and

(b) any contract, assignment or right of subscription exercised or made by, or grant made to, the wife or husband of a director of a company (not being herself or himself a director thereof) shall be deemed to have been entered into or exercised or made or, as the case may be, as having been made to the director; and so shall a contract, assignment or right of subscription entered into, exercised or made by, or grant made to, an infant son or infant daughter of a director of a company (not being himself or herself a director thereof).

(15) In subsection (14), "son" includes step-son and adopted son and "daughter" includes step-daughter and adopted daughter.

(16) If default is made in complying with this section, the company and every officer of the company who is in default is guilty of an offence and

liable on conviction to a fine not exceeding $15,000, imprisonment for a term not exceeding 3 years and, in the case of a continuing offence, to a further fine of $1,000 for every day during which the offence continues after conviction.

Statement as to remuneration of directors to be furnished to shareholders

146. (1) Subject as hereinafter provided, the directors of a company shall, on a demand in that behalf made to them in writing by members of the company entitled to not less than one-fourth of the aggregate number of votes to which all the members of the company are together entitled, furnish to all the members of the company within a period of one month from the receipt of the demand a statement, certified as correct, or which such qualifications as may be necessary, by the auditors of the company, showing as respects each of the last 3 preceding years in respect of which the accounts of the company have been made up the aggregate amount received in that year by way of remuneration or other emoluments by persons being directors of the company, whether as such directors or otherwise in connection with the management of the affairs of the company, and there shall, in respect of any such director who is —

(a) a director of any other company which is, in relation to the first mentioned company, a subsidiary company; or

(b) by virtue of the nomination, whether direct or indirect, of the company, a director of any other company,

be included in that aggregate amount any remuneration or other emoluments received by him for his own use whether as a director of, or otherwise in connection with the management of the affairs of, that other company:

Provided that —

(i) a demand for a statement under this section shall be of no effect if the company within one month after the date on which the demand is made resolve that the statement shall not be furnished; and

(ii) it shall be sufficient to state the total aggregate of all sums paid to or other emoluments received by all the directors in each year without specifying the amount received by any individual.

(2) If any director fails to comply with the requirements of this section, he is guilty of an offence and liable on conviction to a fine of $1,000.

(3) In this section, "emoluments" includes fees, percentages and other payments made or consideration given, directly or indirectly, to a director as such, and the money value of any allowances or perquisites belonging to his office.

Disclosure by directors of interest in contracts

147. (1) Subject to the provisions of this section, it shall be the duty of a director of a company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company, to declare the nature of his interest at a meeting of the directors of the company.

(2) In the case of a proposed contract, the declaration required by this section to be made by a director shall be made at the meeting of the directors at which the question of entering into the contract is first taken into consideration, or, if the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after he became so interested and, in a case where the director becomes interested in a contract after it is made, such declaration shall be made at the first meeting of the directors held after the director becomes so interested.

(3) For the purposes of this section, a general notice given to the directors of a company by a director to the effect that he is a member of a specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm shall be deemed to be a sufficient declaration of interest in relation to any contract so made.

(4) Any director who fails to comply with the provisions of this section is guilty of an offence and liable on conviction to a fine of $2,000.

(5) Nothing in this section shall be taken to prejudice the operation of any rule of law restricting directors of a company from having any interest in contracts with the company.

General duty to make disclosure *[S 6/2015]*

147A. (1) A director of a company shall give notice in writing to the company —

(a) of such particulars relating to shares, debentures, participatory interests, rights, options and contracts as are necessary for the purposes of compliance with section 145A by the wholly–owned subsidiary company referred to in section 145A(3);

(b) of particulars of any change in respect of the particulars referred to in paragraph *(a)* of which notice has been given to the company including the consideration, if any, received as a result of the event giving rise to the change; and

(c) of such events and matters affecting or relating to himself as are necessary for the purposes of compliance by the company with section 143 that are applicable in relation to him.

(2) A notice under subsection (1) shall be given —

(a) in the case of a notice under subsection (1)*(a)*, within 2 business days after —

(i) the date on which the director became a director; or

(ii) the date on which the director became a registered holder of or acquired an interest in the shares, debentures, participatory interests, rights, options or contracts,

whichever last occurs;

(b) in the case of a notice under subsection (1)*(b)*, within 2 business days after the occurrence of the event giving rise to the change referred to in that paragraph; and

(c) in the case of a notice under subsection (1)*(c)*, within 2 business days after the date on which the director became a director.

(3) A company shall, within 7 days after it receives a notice given under subsection (1), send a copy of the notice to each of the other directors of the company.

(4) It is a defence to a prosecution for failing to comply with subsection (1)*(a)* or *(b)* or with subsection (2) if the defendant proves that his

failure was due to his not being aware of a fact or occurrence the existence of which was necessary to constitute the offence and that —

(a) he was not so aware on the date of the information or summons; or

(b) he became so aware less than 7 days before the date of the summons.

(5) For the purposes of subsection (4), a person shall conclusively be presumed to have been aware at a particular time of a fact or occurrence —

(a) of which he would, if he had acted with reasonable diligence in the conduct of his affairs, have been aware at that time; or

(b) of which an employee or agent of the person, being an employee or agent having duties or acting in relation to his master's or principal's interest or interests in a share in or a debenture of or participatory interest issued by the company concerned, was aware or would, if he had acted with reasonable diligence in the conduct of his master's or principal's affairs, have been aware at that time.

(6) In this section —

(a) a reference to a participatory interest is a reference to a unit in a collective investment scheme referred to in Part IX of the Securities Markets Order, 2013 (S 59/2013); and

(b) a reference to a person who holds or acquires shares, debentures or participatory interests or an interest in shares, debentures or participatory interests includes a reference to a person who under an option holds or acquires a right to acquire a share, debenture, or participatory interest or an interest in a share, debenture or participatory interest.

(7) Any director who fails to comply with subsection (1) or (2) or any company that fails to comply with subsection (3) is guilty of an offence and liable on conviction to a fine not exceeding $15,000, imprisonment for a term not exceeding 3 years and, in the case of a continuing offence, to a

further fine of $1,000 for every day during which the offence continues after conviction.

Provisions as to payments received by directors for loss of office or on retirement

148. (1) It is hereby declared that it is not lawful in connection with the transfer of the whole or any part of the undertaking or property of a company for any payment to be made to any director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, unless particulars with respect to the proposed payment, including the amount thereof, have been disclosed to the members of the company and the proposal approved by the company.

(2) Where a payment which is hereby declared to be illegal is made to a director of the company, the amount received shall be deemed to have been received by him in trust for the company.

(3) Where a payment is to be made as aforesaid to a director of a company in connection with the transfer to any persons, as a result of an offer made to the general body of shareholders, of all or any of the shares in the company, it shall be the duty of that director to take all reasonable steps to secure that particulars with respect to the proposed payment, including the amount thereof, shall be included in or sent with any notice of the offer made for their shares which is given to any shareholders.

(4) If any such director fails to take reasonable steps as aforesaid, or if any person who has been properly required by any such director to include such particulars in or send them with any such notice fails so to do, he is guilty of an offence and liable on conviction to a fine of $1,000, and if the requirements of subsection (3) are not complied with in relation to any such payment as is mentioned in that subsection, any sum received by the director on account of the payment shall be deemed to have been received by him in trust for any persons who have sold their shares as a result of the offer made.

(5) If in connection with any such transfer, the price to be paid to a director of the company whose office is to be abolished or who is to retire from office for any shares in the company held by him is in excess of the price which could at the time have been obtained by other holders of the like shares or any valuable consideration is given to any such director, the excess of the money value of the consideration, as the case may be, shall, for the

purposes of this section, be deemed to have been a payment made to him by way of compensation for loss of office or as consideration for or in connection with his retirement from office.

(6) Nothing in this section shall be taken to prejudice the operation of any rule of law requiring disclosure to be made with respect to any such payments as are mentioned in this section or with respect to any other like payments made or to be made to the directors of a company.

Provisions as to assignment of office by directors

149. If in the case of any company provision is made by the articles or by any agreement entered into between any person and the company for empowering a director or manager of the company to assign his office as such to another person, any assignment or office made in pursuance of that provision shall, notwithstanding anything to the contrary contained in that provision, be of no effect unless and until it is approved by a special resolution of the company.

Powers of Minister of Finance *[S 26/1998]*

149A. The Minister of Finance may, if he considers it expedient in the public interest, remove, replace or appoint such directors or additional directors of any company in such numbers and on such terms as he considers expedient in the public interest.

Appointment of Executive Manager *[S 26/1998]*

149B. (1) The Minister of Finance may, if he considers it expedient in the public interest, appoint any person to be the Executive Manager of any company.

(2) The Executive Manager shall be appointed for such initial period (not to exceed 6 months) as the Minister of Finance may specify on making such appointment.

(3) The Minister of Finance may extend the appointment of the Executive Manager for such period or periods as he thinks fit.

(4) The Minister of Finance may —

(a) at any time, remove the Executive Manager;

(b) at any time, appoint another person in addition to or in place of the existing Executive Manager;

(c) make such provision as he thinks fit for the remuneration and indemnification of the Executive Manager.

(5) If the appointment by the Minister of Finance has the effect that the office of Executive Manager is to be held by more that one person, the appointment shall declare whether any act required or authorised to be done by the Executive Manager is to be done by all or any one of the persons for the time being holding the office of Executive Manager.

Effect of appointment of Executive Manager *[S 26/1998]*

149C. (1) On the appointment of an Executive Manager —

(a) any petition for the winding up of the company or for the appointment of a Judicial Manager shall be dismissed; and

(b) any receiver or manager of all or any part of the property of the company shall vacate office upon being required to do so by the Executive Manager.

(2) During the period for which an Executive Manager is in office —

(a) no resolution may be passed or order made for the winding up of the company;

(b) no steps may be taken to enforce any security over the property of the company, or to repossess goods in the possession of the company under any hire purchase agreement, conditional sale agreement, chattel leasing agreement or retention of title agreement, except with the consent of the Executive Manager; and

(c) no other legal proceedings (including a petition for a judicial management order) and no execution or other legal process may be commenced or continued, and no distress may be levied, against the company or its property except with the consent of the Executive Manager:

Provided that the Minister of Finance may at any time present a petition for a judicial management order under section 149J.

(3) During the period for which the Executive Manager is in office —

(a) the affairs, business and property of the company shall be managed by or under the control of the Executive Manager;

(b) the powers of the directors to manage the affairs, business and property of the company shall be suspended; and

(c) any power conferred upon the company or its directors, officers or shareholders, whether under this Act or by the memorandum and articles or otherwise, which could be exercised in such a way as to interfere with the exercise by the Executive Manager of his powers, is not exercisable except with the consent of the Executive Manager.

Duties of Executive Manager *[S 26/1998]*

149D. (1) The Executive Manager shall —

(a) take into his custody or under his control the property (wherever situate) to which the company is or appears to be entitled;

(b) investigate the affairs, business and property of the company;

(c) as soon as practicable, report to the Minister of Finance the results of his investigation in such manner as the Minister of Finance may direct;

(d) as soon as practicable, formulate and present to the Minister of Finance his proposals for the future conduct of the affairs, business and property of the company; and

(e) manage the affairs, business and property of the company.

(2) The proposals of the Executive Manager may include (without prejudice to the generality of the foregoing) proposals for —

(a) the removal of the Executive Manager and the return of the company to the control of the directors;

(b) the sanctioning under section 151 of a compromise or arrangement between the company and the persons mentioned in that section;

(c) the appointment of a Judicial Manager pursuant to section 149H or 149J;

(d) the winding up of the company.

Powers of Executive Manager *[S 26/1998]*

149E. (1) The Executive Manager has the power to do all things as may be necessary —

(a) for the management of the affairs, business and property of the company; and

(b) for the discharge of his duties as specified in section 149D.

(2) Without prejudice to the generality of subsection (1), the Executive Manager has —

(a) the powers specified in the Thirteenth Schedule; and

(b) the power to remove any director of the company and to appoint any person to be a director of the company.

(3) A person dealing with the Executive Manager in good faith and for value is not concerned to inquire whether the Executive Manager is acting within his powers.

(4) The Executive Manager has the power to dispose of any property of the company which is subject to a security, upon such terms (whether as to the disposition of the proceeds of such disposal or otherwise) as may be prescribed.

(5) In exercising his powers and discharging his duties, the Executive Manager —

(a) is deemed to act as the agent of the company;

(b) shall not be held to have adopted any contract (including any contract of employment) except where he states in writing his intention to do so; and

(c) shall not incur personal liability on any contract entered into by him or which he causes the company to enter into (except in so far as the contract otherwise provides).

(6) Any sums payable in respect of debts or liabilities of the company incurred while the Executive Manager was in office, under contracts entered into by him or which he causes the company to enter into, or contracts (including contracts of employment) adopted by him, shall be charged on and paid out of any property of the company which was in his custody or under his control at that time, in priority to all other liabilities of the company.

Duty to co-operate with Executive Manager *[S 26/1998]*

149F. (1) Where an Executive Manager is appointed, it is the duty of each of the persons mentioned in subsection (2) —

(a) to give to the Executive Manager such information concerning the company and its promotion, formation, business, dealings, affairs or property as the Executive Manager may require;

(b) to attend on the Executive Manager at such time and place as he may require;

(c) otherwise to give the Executive Manager all assistance in connection with the carrying out of his functions or the exercise of his powers which they are reasonably able to give.

(2) The persons referred to in subsection (1) are —

(a) any person who is or was a director, controller, manager, employee, agent, banker, auditor, legal adviser or shareholder of the company;

(b) any other person who the Executive Manager considers is or may be in possession of information which the Executive Manager believes to be relevant to the exercise of any of his powers.

Investigative powers of Executive Manager *[S 26/1998]*

149G. (1) The Executive Manager may require to appear before him any person who he thinks capable of giving information concerning the promotion, formation, business, dealings, affairs or property of the company, or any other information which the Executive Manager believes to be relevant to the exercise of any of his powers.

(2) The Executive Manager may, for the purpose of carrying out his functions or the exercise of any of his powers, examine any person on oath and may administer an oath accordingly.

(3) The Executive Manager may require any person mentioned in section 149F(2) to produce any documents in his possession or under his control relating to the company or to any of the matters mentioned in section 149F(1)*(a)*; and "documents" include —

(a) anything in which information of any description is recorded in any form, whether in a manner intelligible to the senses or capable of being made intelligible by the use of equipment;

(b) any database or electronic information,

and in relation to information recorded otherwise than in legible form, the power to require its production includes power to require the production of a copy of the information in legible form.

(4) If any person —

(a) fails or refuses to comply with his duty under section 149F(1)*(a)* or *(c)*;

(b) fails or refuses to comply with a requirement of the Executive Manager under section 149F(1)*(b)* or this section;

(c) refuses to answer any question put to him by the Executive Manager,

the Executive Manager may certify that fact in writing to the Court, and the Court may —

(i) punish the offender in the like manner as if he had been guilty of contempt of Court; or

(ii) cause a warrant to be issued to a police officer for the arrest of that person and for the seizure and delivery up to the Executive Manager of any documents (as defined in section 149G(3)) in that person's possession and authorise a person arrested under such a warrant to be kept in custody until he appears before the Executive Manager.

(5) A *lien* or other right to retain possession of any documents (as defined in section 149G(3)) of the company is unenforceable to the extent that its enforcement would deny possession of any documents to the Executive Manager.

Power of Court to make judicial management order *[S 26/1998]*

149H. (1) Subject to this section, if the Court —

(a) is satisfied that a company is or is likely to become unable to pay its debts as they fall due, or it is proved to the satisfaction of the Court that the value of the assets of the company is less than the amount of its liabilities, taking into account its contingent and prospective liabilities; and

(b) considers that the making of a judicial management order under this section would be likely to achieve one or more of the purposes mentioned in section 149I,

the Court may make a judicial management order in relation to the company.

(2) A judicial management order is an order directing that, during the period for which the order is in force, the affairs, business and property of the company shall be managed by a Judicial Manager appointed for the purpose by the Court.

(3) Any person who has acted as Executive Manager of the company in respect of which a judicial management order is sought may be appointed Judicial Manager of that company by the Court.

Purposes of judicial management order *[S 26/1998]*

149I. The purposes for whose achievement a judicial management order may be made on a petition presented under section 149K are —

(a) the survival of the company, and the whole or any part of its undertaking, as a going concern;

(b) the sanctioning under section 151 of a compromise or arrangement between the company and any such persons as are mentioned in that section;

(c) a more advantageous realisation of the company's assets than would be effected on a winding up,

and the order shall specify the purpose or purposes for which it is made.

Power of Minister of Finance to present judicial management petition *[S 26/1998]*

149J. (1) The Minister of Finance may, if he considers it expedient in the public interest, present a petition for a judicial management order in relation to any company.

(2) The Court may make a judicial management order on the petition of the Minister of Finance and appoint a Judicial Manager if the Court is satisfied that it is expedient in the public interest to do so, and the Court may, if it thinks fit, make a judicial management order forthwith or make such other order as it thinks fit.

(3) The purposes for which a judicial management order may be made on the petition of the Minister of Finance are —

(a) such purpose or purposes for the promotion of the public interest as the Minister of Finance may specify in his petition;

(b) all or any one or more of the purposes specified in section 149I,

and the order shall specify the purpose or purposes for which it is made.

Application for judicial management order *[S 26/1998]*

149K. (1) An application to the Court for a judicial management order pursuant to section 149H shall be by petition presented either by the company or the directors, or by a creditor or creditors (including any contingent or prospective creditor or creditors).

(2) Where a petition for a judicial management order is presented to the Court under this section —

(a) notice of the petition shall be given forthwith to the Minister of Finance;

(b) notice of the petition shall be given to such other persons as may be prescribed; and

(c) the petition shall not be withdrawn except with the leave of the Court.

(3) On hearing a petition presented under this section, the Court may (subject to the entitlement of the Minister of Finance to be heard) dismiss it, or adjourn the hearing conditionally or unconditionally, or make a judicial management order or such other order as it thinks fit.

Effect of judicial management order *[S 26/1998]*

149L. (1) On the making of a judicial management order —

(a) any petition for the winding up of the company shall be dismissed;

(b) any Executive Manager of the company shall vacate office; and

(c) the Court may make such provision as it thinks fit for the remuneration and indemnification of the Judicial Manager.

(2) During the period for which a Judicial Manager is in office —

(a) no resolution may be passed or order made for the winding up of the company;

(b) no steps may be taken to enforce any security over the property of the company, or to repossess goods in the possession of the company under any hire purchase agreement, conditional sale agreement, chattel leasing agreement or retention of title agreement, except with the consent of the Judicial Manager or leave of the Court; and

(c) no other legal proceedings and no execution or other legal process may be commenced or continued, and no distress may be levied against the company or its property except with the consent of the Judicial Manager.

(3) During the period for which the Judicial Manager is in office —

(a) the affairs, business and property of the company shall be managed by the Judicial Manager;

(b) the powers of the directors to manage the affairs, business and property of the company shall be suspended; and

(c) any power conferred upon the company or its directors, officers or shareholders, whether under this Act or by the memorandum and articles or otherwise, which could be exercised in such a way as to interfere with the exercise by the Judicial Manager of his powers, is not exercisable except with the consent of the Judicial Manager.

Powers of Judicial Manager *[S 26/1998]*

149M. (1) The Judicial Manager has the power to do all things as may be necessary for —

(a) the management of the affairs, business and property of the company;

(b) the achievement of one or more of the purposes for which the judicial management order was made.

(2) Without prejudice to the generality of subsection (1), the Judicial Manager has —

(a) the powers specified in the Thirteenth Schedule;

(b) the power to remove any director of the company and appoint any person to be a director of the company.

(3) In exercising his powers and discharging his duties, the Judicial Manager —

(a) is deemed to act as the agent of the company;

(b) shall not be held to have adopted any contract (including any contract of employment) except where he states in writing his intention to do so;

(c) shall not incur personal liability on any contract entered into by him or which he causes the company to enter into (except insofar as the contract otherwise provides).

(4) Any sums payable in respect of debts or liabilities of the company incurred while the Judicial Manager was in office, under contracts entered into by him or which he causes the company to enter into, or contracts (including contracts of employment) adopted by him, shall be charged on and paid out of any property of the company which was in his custody or under his control at that time, in priority to all other liabilities of the company except those liabilities, if any, referred to in section 149E(6).

Duty to co-operate with Judicial Manager *[S 26/1998]*

149N. (1) Where a Judicial Manager is appointed, it is the duty of each of the persons mentioned in subsection (2) —

(a) to give to the Judicial Manager such information concerning the company or its promotion, formation, business, dealings, affairs or property as the Judicial Manager may require;

(b) to produce to the Judicial Manager any documents in his possession or under his control relating to the company or its promotion, formation, business, dealings, affairs or property; and "documents" include —

(i) anything in which information of any description is recorded in any form, whether in a manner intelligible

to the senses or capable of being made intelligible by the use of equipment;

(ii) any database or electronic information,

and in relation to information recorded otherwise than in legible form, the power to require its production includes power to require the production of a copy of the information in legible form;

(c) to attend on the Judicial Manager at such time and place as he may require;

(d) otherwise to give the Judicial Manager all assistance in connection with the carrying out of his functions or the exercise of his powers which they are reasonably able to give.

(2) The persons referred to in subsection (1) are —

(a) any person who is or was a director, controller, manager, employee, agent, banker, auditor, legal adviser or shareholder of the company;

(b) any other person who the Judicial Manager considers is or may be in possession of information which the Judicial Manager believes to be relevant to the exercise of any of his powers.

General powers *[S 26/1998]*

149O. (1) The Judicial Manager may apply to the Court for directions in relation to any particular matter arising in connection with the carrying out of his functions.

(2) A person dealing with the Judicial Manager in good faith and for value is not concerned to enquire whether the Judicial Manager is acting within his powers.

(3) The Judicial Manager has the power to dispose of any property of the company which is subject to a security, upon such terms (whether as to the disposition of the proceeds of such disposal or otherwise) as may be prescribed.

Duties of Judicial Manager *[S 26/1998]*

149P. The Judicial Manager shall, on his appointment, take into his custody or under his control all the property (wherever situate) to which the company is or appears to be entitled and shall, subject to this Act, manage the affairs, business and property of the company.

Discharges of variation of judicial management order *[S 26/1998]*

149Q. (1) The Judicial Manager may at any time apply to the Court for the judicial management order to be discharged, or to be varied so as to specify an additional purpose.

(2) The Judicial Manager shall make an application under this section if it appears to him that the purpose or each of the purposes specified in the order either has been achieved or is incapable of achievement.

(3) On the hearing of an application under this section, the Court may by order discharge or vary the judicial management order and make such consequential provision as it thinks fit.

Vacation of office *[S 26/1998]*

149R. (1) The Judicial Manager of a company may at any time be removed from office by order of the Court and shall cease to hold office in such other circumstances as may be prescribed.

(2) The Judicial Manager shall vacate office if the judicial management order is discharged.

Release of Judicial Manager *[S 26/1998]*

149S. (1) A person who has ceased to be the Judicial Manager of a company has his release in such circumstances as may be prescribed.

(2) Where a person has his release under this section, he is discharged from all liability both in respect of his acts or omissions in the judicial management and otherwise in relation to his conduct as Judicial Manager.

Statement of affairs to be submitted to Judicial Manager *[S 26/1998]*

149T. (1) Where a judicial management order has been made, the Judicial Manager shall forthwith require some or all of the persons

mentioned in subsection (2) to make out and submit to him within such time as he may require a statement in such form as he may require as to the affairs of the company.

(2) The persons referred to in subsection (1) are —

(a) any person who is or was a director, controller, manager, employee, agent, banker, auditor, legal adviser or shareholder of the company;

(b) any other person who the Judicial Manager considers is or may be in possession of information which the Judicial Manager believes to be relevant to the exercise of any of his powers.

Consequences of failure to comply *[S 26/1998]*

149U. (1) If any person fails or refuses to comply with his duty under section 149N or a requirement of the Judicial Manager under section 149T, the Judicial Manager may certify that fact in writing to the Court, and the Court may —

(a) punish the offender in the like manner as if he had been guilty of contempt of Court; or

(b) cause a warrant to be issued to a police officer for the arrest of that person and for the seizure and delivery up to the Judicial Manager of any document (as defined in section 149G(3)) in that person's possession and authorise a person arrested under such a warrant to be kept in custody until he appears before the Judicial Manager.

(2) A *lien* or other right to retain possession of any documents (as defined in section 149G(3)) of the company is unenforceable to the extent that its enforcement would deny possession of any documents to the Judicial Manager.

AVOIDANCE OF PROVISIONS IN ARTICLES OR CONTRACTS RELIEVING OFFICERS FROM LIABILITY

Provisions as to liability of officers and auditors

150. Subject as hereinafter provided, any provision, whether contained in the articles of a company or in any contract with a company or otherwise, for exempting any director, manager or officer of the company, or any person (whether an officer of the company or not) employed by the company as auditor from, or indemnifying him against, any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company shall be void:

Provided that —

(a) in relation to any such provision which is in force at the date of the commencement of this Act, this section shall have effect only on the expiration of a period of 6 months from that date;

(b) nothing in this section shall operate to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force; and

(c) notwithstanding anything in this section, a company may, in pursuance of any such provision, indemnify any such director, manager, officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application under section 321 in which relief is granted to him by the Court.

ARRANGEMENTS AND RECONSTRUCTIONS

Power to compromise with creditors and members

151. (1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them, the Court may, on the application in a summary way of the company or of any creditor or member of the company or, in the case of a company being wound up, of the liquidator, order a

meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be summoned in such manner as the Court directs.

(2) If a majority in number representing three-fourths in value of the creditors or class of creditors, or members or class of members, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors or the class of creditors, or on the members or class of members, as the case may be, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(3) An order made under subsection (2) shall have no effect until an office copy of the order has been delivered to the Registrar for registration, and a copy of every such order shall be annexed to every copy of the memorandum of the company issued after the order has been made or, in the case of a company not having a memorandum, of every copy so issued of the instrument constituting or defining the constitution of the company.

(4) If a company makes default in complying with subsection (3), the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a fine of $15 for each copy in respect of which default is made.

(5) In this section —

"arrangement" includes a reorganisation of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both those methods;

"company" means any company liable to be wound up under this Act.

Provisions for facilitating reconstruction and amalgamation of companies

152. (1) Where an application is made to the Court under section 151 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of

any company or companies or the amalgamation of any two or more companies, and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as the transferor company) is to be transferred to another company (in this section referred to as the transferee company), the Court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters —

(a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;

(b) the allotting or appropriation by the transferee company of any shares, debentures, policies, or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;

(c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;

(d) the dissolution, without winding up, of any transfer or company;

(e) the provision to be made for any persons, who within such time and in such manner as the Court may direct, dissent from the compromise or arrangement;

(f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(2) Where an order under this section provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall by virtue of the order, be transferred to and become the liabilities of, the transferee company, and in the case of any property, if the order so directs, freed from any charge which is by virtue of the compromise or arrangement to cease to have effect.

(3) Where an order is made under this section, every company in relation to which the order is made shall cause an office copy thereof to be

delivered to the Registrar for registration within 7 days after the making of the order, and if default is made in complying with this subsection, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a default fine.

(4) In this section —

"liabilities" includes duties;

"property" includes property, rights and powers of every description.

(5) Notwithstanding the provisions of section 151(5), "company" in this section does not include any company other than a company within the meaning of this Act.

Power to acquire shares of shareholders dissenting from scheme or contract approved by majority

153. (1) Where a scheme or contract involving the transfer of shares or any class of shares in a company (in this section referred to as the transferor company) to another company, whether a company within the meaning of this Act or not (in this section referred to as the transferee company) has, within 4 months after the making of the offer in that behalf by the transferee company, been approved by the holders of not less than nine-tenths in value of the shares affected, the transferee company may, at any time within 2 months after the expiration of that 4 months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares, and where such a notice is given the transferee company shall, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given the Court thinks fit to order otherwise, be titled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders are to be transferred to the transferee company.

(2) Where a notice has been given by the transferee company under this section and the Court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall, on the expiration of one month from the date on which the notice has been given or, if an application to the Court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company and pay or transfer to the transferor company the amount or other consideration representing the price payable by

the transferee company for the shares which by virtue of this section that company is entitled to acquire, and the transferor company shall thereupon, register the transferee company as the holder of those shares.

(3) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company on trust for the several persons entitled to the shares in respect of which the said sums or other consideration were respectively received.

(4) In this section, "dissenting shareholder" includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.

PART V

WINDING UP

(i) PRELIMINARY

MODES OF WINDING UP

Modes of winding up

154. (1) The winding up of a company may be either —

(a) by the Court;

(b) voluntary; or

(c) subject to the supervision of the Court.

(2) The provisions of this Act with respect to winding up apply, unless the contrary appears, to the winding up of a company in any of those modes.

CONTRIBUTORIES

Liability as contributories of present and past members

155. (1) In the event of a company being wound up, every present and past member shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities, and the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, subject to the provisions of subsection (2) and the following qualifications —

(a) a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up;

(b) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;

(c) a past member shall not be liable to contribute unless it appears to the Court that the existing members are unable to satisfy the contribution required to be made by them in pursuance of this Act;

(d) in the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member;

(e) in the case of a company limited by guarantee, no contribution shall, subject to the provisions of subsection (3), be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up;

(f) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted or whereby the funds of the company are alone made liable in respect of the policy or contract;

(g) a sum due to any member of a company in his character of a member by way of dividends, profits or otherwise shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company, but any such sum may be taken into account, for the purpose of the final adjustment of the rights of the contributories among themselves.

(2) In the winding up of a limited company, any director or manager, whether past or present, whose liability is, under the provisions of this Act, unlimited shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of the winding up a member of an unlimited company:

Provided that —

(a) a past director or manager shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding up;

(b) a past director or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office;

(c) subject to the articles of the company, a director or manager shall not be liable to make such further contribution unless the Court deems it necessary to require that contribution in order to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of the winding up.

(3) In the winding up of a company limited by guarantee which has a share capital, every member of the company shall be liable, in addition to the amount under taken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums un paid on any shares held by him.

Definition of contributory

156. "Contributory" means every person liable to contribute to the assets of a company in the event of its being wound up, and for the purposes of all proceedings for determining, and all proceedings prior to the final

determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory.

Nature of liability of contributory

157. The liability of a contributory shall create a debt of the nature of a specialty accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.

Contributories in case of death of member

158. (1) If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives (and his heirs or other inheritors in countries where property does not pass to personal representatives) shall be liable in due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly.

(2) Where the personal representatives are placed on the list of contributories, such heirs or inheritors need not be added, but they may be added as and when the Court thinks fit.

Default by personal representatives

159. If the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory and for compelling payment there out of the money due.

Contributories in case of bankruptcy of member

160. If a contributory becomes bankrupt, either before or after he has been placed on the list of contributories —

(a) his trustee in bankruptcy shall represent him for all the purposes of the winding up, and shall be a contributory accordingly, and may be called on to admit to proof against the estate of the bankrupt or otherwise to allow to be paid out of his assets in due course of law any money due from the bankrupt in respect of his liability to contribute to the assets of the company; and

(b) there may be proved against the estate of the bankrupt the estimated value of his liability to future calls as well as calls already made.

(ii) WINDING UP BY COURT

JURISDICTION

Jurisdiction to wind up companies registered in Brunei Darussalam

161. The Court shall have jurisdiction to wind up any company registered in Brunei Darussalam.

CASES IN WHICH COMPANY MAY BE WOUND UP BY COURT

Circumstances in which company may be wound up by Court

162. A company may be wound up by the Court if —

(a) the company has by special resolution resolved that the company be wound up by the Court;

(b) default is made in delivering the statutory report to the Registrar or in holding the statutory meeting;

(c) the company does not commence its business within a year from its incorporation or suspends its business for a whole year;

(d) the number of members is reduced, in the case of a private company, below two or, in the case of any other company, below seven;

(e) the company is unable to pay its debts; or

(f) the Court is of opinion that it is just and equitable that the company should be wound up.

Definition of inability to pay debts

163. A company shall be deemed to be unable to pay its debts —

(a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding $10,000 then due, has served on the company, by leaving it at the registered office of the company, a demand under his hand requiring the company to pay

the sum so due, and the company has for 3 weeks there after neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor;

[S 69/2001]

(b) if execution or other process issued on a judgment, decree or order of any Court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(c) if it is proved to the satisfaction of the Court that the company is unable to pay its debts and, in determining whether a company is unable to pay its debts, the Court shall take into account the contingent and prospective liabilities of the company.

PETITION FOR WINDING UP AND EFFECTS THEREOF

Provisions as to applications for winding up

164. (1) An application to the Court for the winding up of a company shall be by petition, presented subject to the provisions of this section either by the company, or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by all or any of those parties, together or separately:

Provided that —

(a) a contributory shall not be entitled to present a winding up petition unless —

(i) either the number of members is reduced, in the case of a private company, below two or, in the case of any other company, below seven; or

(ii) the shares in respect of which he is a contributory or some of them either were originally allotted to him or have been held by him and registered in his name for at least 6 months during the 18 months before the commencement of the winding up, or have devolved on him through the death of a former holder;

(b) a winding up petition shall not, if the ground of the petition is default in delivering the statutory report to the Registrar or in holding the statutory meeting, be presented by any person except a shareholder, nor before the expiration of 14 days after the last day on which the meeting ought to have been held; and

(c) the Court shall not give a hearing to a winding up petition presented by contingent or prospective creditor until such security for costs has been given as the Court thinks reasonable and until a *prima facie* case for winding up has been established to the satisfaction of the Court.

(2) Where a company is being wound up voluntarily or subject to supervision, a winding up petition may be presented by the Official Receiver attached to the Court as well as by any other person authorised in that behalf under the other provisions of this section, but the Court shall not make a winding up order on the petition unless it is satisfied that the voluntary winding up or winding up subject to supervision cannot be continued with due regard to the interests of the creditors or contributories.

(3) Where under the provisions of this Part any person as being the husband of a female contributory is himself a contributory, and a share has during the whole or any part of the 6 months mentioned in proviso *(a)*(ii) to subsection (1) been held by or registered in the name of the wife, or by or in the name of a trustee for the wife or for the husband, the share shall, for the purposes of this section, be deemed to have been held by and registered in the name of the husband.

(4) A winding up petition may be presented by the Minister of Finance in a case falling within section 164A.

[S 26/1998]

Power of Minister of Finance to present winding up petition *[S 26/1998]*

164A. (1) If, in the case of a company liable to be wound up under this Act, it appears to the Minister of Finance from —

(a) any report made by inspectors or Executive Managers under section 135F or 149D(1)*(c)*;

(b) any information or documents obtained by inspectors appointed under section 135B; or

(c) any other information howsoever obtained which comes to his attention,

that it is expedient in the public interest that the company should be wound up, he may present a petition for it to be wound up if the Court thinks it just and equitable for it to be so.

(2) This section does not apply if the company is already being wound up by the Court.

Powers of Court on hearing petition

165. (1) On hearing a winding up petition, the Court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make any interim order or any other order that it thinks fit, but the Court shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(2) Where the petition is presented on the ground of default in delivering the statutory report to the Registrar or in holding the statutory meeting, the Court may —

(a) instead of making a winding up order, direct that the statutory report shall be delivered or that a meeting shall be held; and

(b) order the costs to be paid by any persons who, in the opinion of the Court, are responsible for the default.

Power to stay or restrain proceedings against company

166. At any time after the presentation of a winding up petition and before a winding up order has been made, the company or any creditor or contributory, may —

(a) where any action or proceedings against the company is pending in any Court, apply to the Court in which the action or proceeding is pending for a stay of proceedings therein; and

(b) where any other action or proceedings is pending against the company, apply to the Court having jurisdiction to wind up the company to restrain further proceedings in the action or proceeding,

and the Court to which application is so made may, as the case may be, stay or restrain the proceedings accordingly on such terms as it thinks fit.

Avoidance of dispositions of property etc. after commencement of winding up

167. In a winding up by the Court, any disposition of the property of the company, including things in action, and any transfer of shares, or alteration in the status of the members of the company, made after the commencement of the winding up shall, unless the Court otherwise orders, be void.

Avoidance to attachments etc.

168. Where any company is being wound up by the Court, any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of the winding up shall be void to all intents.

COMMENCEMENT OF WINDING UP

Commencement of winding up by Court

169. (1) Where before the presentation of a petition for the winding up of a company by the Court, a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the Court, on proof of fraud or mistake, thinks fit otherwise to direct, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

(2) In any other case, the winding up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding up.

CONSEQUENCES OF WINDING UP ORDER

Copy of order to be forwarded to Registrar

170. On the making of a winding up order, a copy of the order must forthwith be forwarded by the company, or otherwise as may be prescribed, to the Registrar, who shall make a minute thereof in his books relating to the company.

Actions stayed on winding up order

171. When a winding up order has been made or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company except by leave of the Court and subject to such terms as the Court may impose.

Effect of winding up order

172. An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory.

OFFICIAL RECEIVER IN WINDING UP

Official Receiver in bankruptcy to be Official Receiver for winding up purposes

173. For the purposes of this Act, so far as it relates to the winding up of companies by the Court, "Official Receiver" means the Official Receiver in bankruptcy.

Appointment of Official Receiver by Court in certain case

174. If in the case of the winding up of any company by the Court, it appears to the Court desirable with a view to securing the more convenient and economical conduct of the winding up, that some officer, other than the Official Receiver in bankruptcy, should be the Official Receiver for the purposes of that winding up, the Court may appoint that other officer to act as Official Receiver in that winding up, and the person so appointed shall be deemed to be the Official Receiver in that winding up for all the purposes of this Act.

Statement of company's affairs to be submitted to Official Receiver

175. (1) Where the Court has made a winding up order or appointed a provisional liquidator, there shall, unless the Court thinks fit to order otherwise and so orders, be made out and submitted to the Official Receiver a statement as to the affairs of the company in the prescribed form, verified by affidavit and showing the particulars of its assets, debts, and liabilities, the names, residences and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given, and

such further or other information as may be prescribed or as the Official Receiver may require.

(2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who is at that date the secretary or other chief officer of the company, or by such of the persons hereinafter in this subsection mentioned as the Official Receiver, subject to the direction of the Court, may require to submit and verify the statement —

(a) persons who are or have been directors or officers of the company;

(b) persons who have taken part in the formation of the company at any time within one year before the relevant date;

(c) persons who are in the employment of the company, or have been in the employment of the company within that year, and are in the opinion of the Official Receiver capable of giving the information required;

(d) persons who are or have been within that year officers of or in the employment of a company, which is, or within that year was, an officer of the company to which the statement relates.

(3) The statement shall be submitted within 28 days from the relevant date, or within such extended time as the Official Receiver or the Court may for special reasons appoint.

(4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the Official Receiver or provisional liquidator, as the case may be, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the Official Receiver may consider reasonable, subject to an appeal to the Court.

(5) If any person, without reasonable excuse, makes default in complying with the requirements of this section, he is guilty of an offence and liable on conviction to a fine of $50 for every day during which the default continues.

(6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom.

(7) Any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of Court and shall, on the application of the liquidator or of the Official Receiver, be punishable accordingly.

(8) In this section, "relevant date" means, in a case where a provisional liquidator is appointed, the date of his appointment and, in a case where no such appointment is made, the date of the winding up order.

Report by Official Receiver

176. (1) In a case where a winding up order is made, the Official Receiver shall, as soon as practicable after receipt of the statement to be submitted under section 175 or, in a case where the Court orders that no statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the Court —

(a) as to the amount of capital issued, subscribed and paid-up, and the estimated amount of assets and liabilities;

(b) if the company has failed, as to the causes of the failure; and

(c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation or failure of the company, or the conduct of the business thereof.

(2) The Official Receiver may also, if he thinks fit, make a further report or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any director or other officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the Court.

(3) If the Official Receiver states in any such further report that in his opinion a fraud has been committed as aforesaid, the Court shall have the further powers provided in sections 207 and 208.

LIQUIDATORS

Power of Court to appoint liquidators

177. For the purposes of conducting the proceedings in winding up a company and performing such duties in reference thereto as the Court may impose, the Court may appoint a liquidator or liquidators.

Appointment and powers of liquidator

178. (1) Subject to the provisions of this section, the Court may appoint a liquidator provisionally at any time after the presentation of a winding up petition.

(2) The appointment of a provisional liquidator may be made at any time before the making of a winding up order, and either the Official Receiver or any other fit person may be appointed.

(3) Where a liquidator is provisionally appointed by the Court, the Court may limit and restrict his powers by the order appointing him.

Appointment, style etc. of liquidators

179. The following provisions with respect to liquidators shall have effect on a winding up order being made —

(a) the Official Receiver shall by virtue of his office become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such;

(b) the Official Receiver shall summon separate meetings of the creditors and contributories of the company for the purpose of determining whether or not an application is to be made to the Court for appointing a liquidator in the place of the Official Receiver;

(c) the Court may make any appointment and order required to give effect to any such determination and, if there is a difference

between the determinations of the meetings of the creditors and contributories in respect of the matter aforesaid, the Court shall decide the difference and make such order thereon as the Court may think fit;

(d) in any case where a liquidator is not appointed by the Court, the Official Receiver shall be the liquidator of the company;

(e) the Official Receiver shall by virtue of his office be the liquidator during any vacancy;

(f) a liquidator shall be described, where a person other than the Official Receiver is liquidator, by the style of the liquidator and, where the Official Receiver is liquidator, by the style of the Official Receiver and liquidator of the particular company in respect of which he is appointed and not by his individual name.

Appointment of liquidator by Minister of Finance *[S 23/1999]*

179A. (1) When a winding up order has been made, the Official Receiver may, at any time when he is the provisional liquidator of the company, apply to the Minister of Finance for the appointment of a person as liquidator in his place.

(2) Section 181 (save for subsection (4) thereof) shall apply to a liquidator appointed by the Minister of Finance under subsection (1) as if he had been appointed by the Court. If any such appointment by the Minister of Finance has the effect that the office of liquidator is to be held by more than one person, the appointment shall declare whether any act authorised or required to be done by the liquidator is to be done by all or any one of the persons appointed.

(3) Where a liquidator has been appointed by the Minister of Finance under subsection (1), he shall —

(a) give notice of his appointment to creditors and advertise his appointment once in the *Gazette*; and

(b) summon separate meetings of creditors and contributories for the purpose of determining whether or not an application is to be made to the Court for the appointment of a committee of inspection to act with the liquidator and who are to be members of the

committee if appointed. Section 191(2) shall apply following such determination.

(4) Where a liquidator has been appointed by the Minister of Finance under subsection (1), section 179*(b)*, *(c)* and *(d)* do not apply.

Provisions where person other than Official Receiver is appointed liquidator

180. Where in the winding up of a company by the Court a person other than the Official Receiver is appointed liquidator, that person —

(a) shall not be capable of acting as liquidator until he has notified his appointment to the Registrar and given security in the prescribed manner to the satisfaction of the Official Receiver;

(b) shall give the Official Receiver such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid as may be requisite for enabling that officer to perform his duties under this Act.

General provisions as to liquidators

181. (1) A liquidator appointed by the Court may resign or, on cause shown, be removed by the Court.

(2) Where a person other than the Official Receiver is appointed liquidator, he shall receive such salary or remuneration by way of percentage or otherwise as the Court may direct and, if more such persons than one are appointed liquidators, their remuneration shall be distributed among them in such proportions as the Court directs.

(3) A vacancy in the office of a liquidator appointed by the Court shall be filled by the Court.

(4) If more than one liquidator is appointed by the Court, the Court shall declare whether any act by this Act required or authorised to be done by the liquidator is to be done by all or any one or more of the persons appointed.

(5) Subject to the provisions of section 263, the acts of liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

Custody of company's property

182. Where a winding up order has been made or where a provisional liquidator has been appointed, the liquidator or the provisional liquidator, as the case may be, shall take into his custody or under his control, all the property and things in action to which the company is or appears to be entitled.

Vesting of property of company in liquidator

183. Where a company is being wound up by the Court, the Court may on the application of the liquidator by order direct that all or any part of the property of whatsoever description belonging to the company or held by trustees on its behalf shall vest in the liquidator by his official name, and thereupon the property to which the order relates shall vest accordingly, and the liquidator may, after giving such indemnity, if any, as the Court may direct, bring or defend in his official name any action or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.

Powers of liquidator

184. (1) The liquidator in a winding up by the Court shall have power with the sanction either of the Court or of the committee of inspection —

(a) to bring or defend any action or other legal proceedings in the name and on behalf of the company;

(b) to carry on the business of the company, so far as may be necessary for the beneficial winding up thereof;

(c) to appoint a solicitor to assist him in the performance of his duties;

(d) to pay any classes of creditors in full;

(e) to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable;

(f) to compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory, or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.

(2) The liquidator in a winding up by the Court shall have power —

(a) to sell the real and personal property and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels;

(b) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal;

(c) to prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributory, for any balance against his estate, and to receive dividends in the bankruptcy, insolvency or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent and rateably with the other separate creditors;

(d) to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business;

(e) to raise on the security of the assets of the company any money requisite;

(f) to take out in his official name letters of administration to any deceased contributory and to do in his official name any other act necessary for obtaining payment of any money due from a

contributory or his estate which cannot be conveniently done in the name of the company and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself;

(g) to appoint an agent to do any business which the liquidator is unable to do himself;

(h) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

(3) The exercise by the liquidator in a winding up by the Court of the powers conferred by this section shall be subject to the control of the Court and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any, of those powers.

Exercise and control of liquidator's powers

185. (1) Subject to the provisions of this Act, the liquidator of a company which is being wound up by the Court shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.

(2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories, as the case may be.

(3) The liquidator may apply to the Court in manner prescribed for directions in relation to any particular matter arising under the winding up.

(4) Subject to the provisions of this Act, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

(5) If any person is aggrieved by any act or decision of the liquidator, that person may apply to the Court and the Court may confirm, reverse or modify the act or decision complained of and make such order in the premises as it thinks just.

Books to be kept by liquidator

186. Every liquidator of a company which is being wound up by the Court shall keep, in manner prescribed, proper books in which he shall cause to be made entries or minutes of proceedings at meetings and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the Court, personally or by his agent inspect any such books.

Payments of liquidator into bank or Treasury

187. (1) Every liquidator other than the Official Receiver of a company which is being wound up by the Court shall, in such manner and at such times as the Official Receiver directs, pay the money received by him to the Companies Liquidation Account at the bank where such account is kept and the Permanent Secretary shall furnish him with a certificate of receipt of the money so paid, and when the Official Receiver is the liquidator of such company he shall pay all monies received by him in such capacity into the Companies Liquidation Account:

Provided that if the committee of inspection satisfy the Official Receiver that for the purpose of carrying on the business of the company or of obtaining advances, or for any other reason, it is for the advantage of the creditors or contributories that the liquidator should have an account with any other bank, the Official Receiver shall, on the application of the committee of inspection, authorise the liquidator to make his payments into and out of such other bank as the committee may select and thereupon those payments, shall be made in the prescribed manner.

(2) If any such liquidator at any time retains for more than 10 days a sum exceeding $500 or such other amount as the Court in any particular case may authorise him to retain, then, unless he explains the retention to the satisfaction of the Court, he shall pay interest on the amount so retained in excess at the rate of 20 *per cent per annum,* and shall be liable to disallowance of all or such part of his remuneration as the Court may think just and to be removed from his office by the Court, and shall be liable to pay any expenses occasioned by reason of his default.

(3) A liquidator of a company which is being wound up by the Court shall not pay any sums received by him as liquidator into his private banking account.

Audit of liquidator's accounts

188. (1) Every liquidator (other than the Official Receiver) of a company which is being wound up by the Court shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, send to the Official Receiver an account of his receipts and payments as liquidator, and where the Official Receiver is liquidator he shall cause such account to be prepared.

(2) The account shall be in a prescribed form, made in duplicate and verified by a statutory declaration in the prescribed form.

(3) The Official Receiver shall cause the account to be audited and for the purpose of the audit the liquidator shall furnish the Official Receiver with such vouchers and information as the Official Receiver may require, and the Official Receiver may at any time require the production of and inspect any books or accounts kept by the liquidator.

(4) When the account has been audited, one copy thereof shall be filed and kept by the Official Receiver and the other copy shall be delivered to the Court for filing, and each copy shall be open to the inspection of any creditor or of any person interested.

(5) The Official Receiver shall cause the account when audited or a summary thereof to be printed and shall send a printed copy of the account or summary by post to every creditor and contributory.

Control of Official Receiver over liquidators

189. (1) The Official Receiver shall take cognisance of the conduct of liquidators of companies which are being wound up by the Court and, if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by statute, rules or otherwise with respect to the performance of his duties, or if any complaint is made to the Official Receiver by any creditor or contributory in regard thereto, the Official Receiver shall inquire into the matter and take such action thereon as he may think expedient.

(2) The Official Receiver may at any time require any liquidator of a company which is being wound up by the Court to answer any inquiry in relation to any winding up in which he is engaged and may, if he thinks fit, apply to the Court to examine him or any other person on oath concerning the winding up.

(3) The Official Receiver may also direct a local investigation to be made of the books and vouchers of the liquidator.

Release of liquidators

190. (1) When the liquidator of a company which is being wound up by the Court has realised all the property of the company or so much thereof as can, in his opinion, be realised without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories, or has resigned, or has been removed from his office, the Court shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the Court, shall take into consideration the report and any objection which may be urged by any creditor or contributory, or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly.

(2) Where the release of a liquidator is withheld, the Court may, on the application of any creditor or contributory, or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.

(3) An order of the Court releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4) Where the liquidator has not previously resigned or been removed, his release shall operate as a removal of him from his office.

COMMITTEES OF INSPECTION

Meetings of creditors and contributories to determine whether committee of inspection shall be appointed

191. (1) When a winding up order has been made by the Court, it shall be the business of the separate meetings of creditors and contributories summoned for the purpose of determining whether or not an application should be made to the Court for appointing a liquidator in place of the Official Receiver, to determine further whether or not an application is to be made to the Court for the appointment of a committee of inspection to act with the liquidator and who are to be members of the committee if appointed.

(2) The Court may make any appointment and order required to give effect to any such determination, and if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matters aforesaid the Court shall decide the difference and make such order thereon as the Court may think fit.

Constitution and proceedings of committee of inspection

192. (1) A committee of inspection appointed in pursuance of this Act shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of creditors and contributories, or as, in case of difference, may be determined by the Court.

(2) The committee shall meet at such times as they from time to time appoint and, failing such appointment, at least once a month, and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(3) The committee may act by a majority of their members present at a meeting but shall not act unless a majority of the committee are present.

(4) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(5) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members who together

with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.

(6) A member of the committee may be removed by an ordinary resolution at a meeting of creditors if he represents creditors, or of contributories if he represents contributories, of which 7 days' notice has been given, stating the object of the meeting.

(7) On a vacancy occurring in the committee, the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, re-appoint the same or appoint another creditor or contributory to fill the vacancy.

(8) The continuing members of the committee if not less than two, may act notwithstanding any vacancy in the committee.

Powers of Court where no committee of inspection

193. Where in the case of a winding up there is no committee of inspection, the Court may, on the application of the liquidator, do any act or thing or give any direction or permission which is by this Act authorised or required to be done or given by the committee.

GENERAL POWERS OF COURT IN CASE OF WINDING UP BY COURT

Power to stay winding up

194. (1) The Court may at any time after an order for winding up, on the application either of the liquidator, or the Official Receiver, or any creditor or contributory, and on proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the Court thinks fit.

(2) On any application under this section, the Court may, before making an order, require the Official Receiver to furnish to the Court a report with respect to any facts or matters which are in his opinion relevant to the application.

Settlement of list of contributories and application of assets

195. (1) As soon as may be after making a winding up order, the Court shall settle a list of contributories with power to rectify the register of members in all cases where rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected and applied in discharge of its liabilities:

Provided that, where it appears to the Court that it will not be necessary to make calls on or adjust the rights of contributories, the Court may dispense with the settlement of a list of contributories.

(2) In settling the list of contributories, the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

Delivery of property of liquidator

196. The Court may, at any time after making a winding up order, require any contributory for the time being on the list of contributories, and any trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender or transfer forthwith, or within such time as the Court directs, to the liquidator any money, property or books and papers in his hands to which the company is *prima facie* entitled.

Payment of debts due by contributory to company and extent to which set-off allowed

197. (1) The Court may, at any time after making a winding up order, make an order on any contributory for the time being on the list of contributories to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

(2) The Court in making such an order may —

(a) in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit; and

(b) in the case of a limited company, make to any director or manager whose liability is unlimited or to his estate the like allowance.

(3) In the case of any company, whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

Power of Court to make calls

198. (1) The Court may, at any time after making a winding up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the Court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses, of winding up, and for the adjustment of the rights of the contributories among themselves and make an order for payment of any calls so made.

(2) In making a call the Court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

Payment into bank of moneys due to company

199. (1) The Court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount due into such bank as the Court may direct to the account of the liquidator instead of to the liquidator, and any such order may enforced in the same manner as if it had directed payment to the liquidator.

(2) All moneys and securities paid or delivered into such bank in the event of a winding up by the Court shall be subject in all respects to the orders of the Court.

Order on contributory conclusive evidence

200. (1) An order made by the Court on a contributory shall, subject to any right of appeal, be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.

(2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings.

Appointment of special manager

201. (1) Where in proceedings the Official Receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the Court, and the Court may on such application, appoint a special manager of such estate or business to act during such time as the Court may direct with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the Court.

(2) The special manager shall give such security and account in such manner as the Court may direct.

(3) The special manager shall receive such remuneration as may be fixed by the Court.

Power to exclude creditors not proving in time

202. The Court may fix a time or times within which creditors are to prove their debt or claims, or to be excluded from the benefit of any distribution made before those debts are proved.

Adjustment of rights of contributories

203. The Court shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled thereto.

Inspection of books by creditors and contributories

204. The Court may, at any time after making a winding up order, make such order for inspection of the books and papers of the company by creditors and contributories as the Court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

Power to order costs of winding up to be paid out of assets

205. The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs,

charges and expenses incurred in the winding up in such order of priority as the Court thinks just.

Power to summon persons suspected of having property of company

206. (1) The Court may, at any time after the appointment of a provisional liquidator or the making of a winding up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the Court deems capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the company.

(2) The Court may examine him on oath concerning the matters aforesaid, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.

(3) The Court may require him to produce any books and papers in his custody or power relating to the company but, where he claims any *lien* on books or papers produced by him, the production shall be without prejudice to that *lien*, and the Court shall have jurisdiction in the winding up to determine all questions relating to that *lien*.

(4) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, not having a lawful impediment (made known to the Court at the time of its sitting, and allowed by it), the Court may cause him to be apprehended and brought before the Court for examination.

Power to order public examination of promoters, directors etc.

207. (1) Where an order has been made for winding up a company by the Court and the Official Receiver has made a further report under this Act stating that, in his opinion, a fraud has been committed by any person in the promotion or formation of the company, or by any director or other officer of the company in relation to the company since its formation, the Court may, after consideration of the report, direct that that person, director or officer shall attend before the Court on a day appointed by the Court for that purpose and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as director or officer thereof.

(2) The Official Receiver shall take part in the examination and for that purpose may, if specially authorised by the Court in that behalf, employ an advocate.

(3) The liquidator, where the Official Receiver is not the liquidator, and any creditor or contributory, may also take part in the examination either personally or by an advocate.

(4) The Court may put such questions to the person examined as the Court thinks fit.

(5) The person examined shall be examined on oath and shall answer all such questions as the Court may put or allow to be put to him.

(6) A person ordered to be examined under this section shall at his own cost, before his examination be furnished with a copy of the Official Receiver's report, and may at his own cost employ an advocate, who shall be at liberty to put to him such questions as the Court may deem just for the purpose of enabling him to explain or qualify any answers given by him:

Provided that, if any such person applies to the Court to be exculpated from any charges made or suggested against him, it shall be the duty of the Official Receiver to appear on the hearing of the application and call the attention of the Court to any matters which appear to the Official Receiver to be relevant, and if the Court, after hearing any evidence given or witnesses called by the Official Receiver, grants the application, the Court may allow the applicant such costs as in its discretion it may think fit.

(7) Notes of the examination shall be taken down in writing and shall be read over to or by, and signed by, the person examined and may thereafter be used in evidence against him and shall be open to the inspection of any creditor or contributory at all reasonable times.

(8) The Court may, if it thinks fit, adjourn the examination from time to time.

Power to restrain fraudulent persons from managing companies

208. (1) Where an order has been made for winding up a company by the Court and the Official Receiver has made a further report in accordance with this Act stating that, in his opinion, a fraud has been committed by a person in the promotion or formation of the company, or by any director or

other officer of the company in relation to the company since its formation, the Court may, on the application of the Official Receiver, order that that person, director or officer shall not, without the leave of the Court, be a director of or in any way, whether directly or indirectly, be concerned in or take part in the management of a company for such period, not exceeding 5 years, from the date of the report as may be specified in the order.

(2) The Official Receiver shall, where he intends to make an application under subsection (1), give not less than 10 days' notice of his intention to the person charged with the fraud, and on the hearing of the application that person may appear and himself give evidence or call witnesses.

(3) It shall be the duty of the Official Receiver to appear on the hearing of an application by him for an order under this section and on an application for leave under this section and to call the attention of the Court to any matters which appear to him to be relevant, and on any such application the Official Receiver may himself give evidence or call witnesses.

(4) If any person acts in contravention of an order made under this section, he is, in respect of each offence, guilty of an offence and liable on conviction to a fine of $5,000 and imprisonment for 2 years.

(5) The provisions of this section shall have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the order is to be made.

Power to arrest absconding contributory

209. The Court, at any time either before or after making a winding up order, on proof of probable cause for believing that a contributory is about to quit Brunei Darussalam, or otherwise to abscond, or to remove or conceal any of his property for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested and his books and papers and moveable personal property to be seized, and him and them to be safely kept until such time as the Court may order.

Powers of Court cumulative

210. Any powers by this Act conferred on the Court shall be in addition to and not in restriction of any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

Delegation to liquidator of certain powers of Court

211. Provision may be made by general rules for enabling or requiring all or any of the powers and duties conferred and imposed on the Court by this Act in respect of the following matters —

(a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;

(b) the settling of lists of contributories and the rectifying of the register of members where required, and the collecting and applying of the assets;

(c) the paying, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;

(d) the making the calls;

(e) the fixing of a time within which debts and claims must be proved,

to be exercised or performed by the liquidator as an officer of the Court and subject to the control of the Court:

Provided that the liquidator shall not, without the special leave of the Court, rectify the register of members and shall not make any call without either the special leave of the Court or the sanction of the committee of inspection.

Dissolution of company

212. (1) When the affairs of a company have been completely wound up, the Court shall make an order that the company be dissolved from the date of the order and the company shall be dissolved accordingly.

(2) The order shall within 14 days from the date thereof be reported by the liquidator to the Registrar of Companies who shall make in his books a minute of the dissolution of the company.

(3) If the liquidator makes default in complying with the requirements of this section, he is guilty of an offence and liable on conviction to a fine of $25 for every day during which he is in default.

(iii) VOLUNTARY WINDING UP

RESOLUTIONS FOR, AND COMMENCEMENT OF, VOLUNTARY WINDING UP

Circumstances in which company may be wound up voluntarily

213. A company may be wound up voluntarily —

(a) when the period, if any, for the direction of the company by the articles expires or the event, if any, occurs on the occurrence of which the articles provide that the company is to be dissolved and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily;

(b) if the company resolves by special resolution that the company be wound up voluntarily;

(c) if the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business and that it is advisable to wind up.

Notice of resolution to wind up voluntarily

214. (1) When a company has passed a resolution for voluntary winding up, it shall, within 14 days after the passing of the resolution, give notice of the resolution by advertisement in the *Gazette.*

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine, and for the purposes of this subsection the liquidator of the company shall be deemed to be an officer of the company.

Commencement of voluntary winding up

215. A voluntary winding up shall be deemed to commence at the time of the passing of the resolution for voluntary winding up.

CONSEQUENCES OF VOLUNTARY WINDING UP

Effect of voluntary winding up on business and status of company

216. In case of a voluntary winding up, the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof:

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

Avoidance of transfers etc. after commencement of voluntary winding up

217. Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company, made after the commencement of a voluntary winding up, shall be void.

DECLARATION OF SOLVENCY

Statutory declaration of solvency in case of proposal to wind up voluntarily

218. (1) Where it is proposed to wind up a company voluntarily, the directors of the company or, in the case of a company having more than two directors, the majority of the directors may, at a meeting of the directors held before the date on which the notices of the meeting at which the resolution for the winding up of the company is to be proposed are sent out, make a statutory declaration to the effect that they have made a full inquiry into the affairs of the company, and that, having done so, they have formed the opinion that the company will be able to pay its debts in full within a period, not exceeding one year, from the commencement of the winding up.

(2) A declaration made as aforesaid shall have no effect for the purpose of this Act unless it is delivered to the Registrar for registration before the date mentioned in subsection (1).

(3) A winding up in the case of which a declaration has been made and delivered in accordance with this section is in this Act referred to as a members' voluntary winding up, and a winding up in the case of which a declaration has not been made and delivered as aforesaid is in this Act referred to as a creditors' voluntary winding up.

PROVISIONS APPLICABLE TO MEMBERS' VOLUNTARY WINDING UP

Provisions applicable to members' winding up

219. The provisions contained in sections 220, 221, 222, 223 and 224 apply in relation to a members' voluntary winding up.

Power of company to appoint and fix remuneration of liquidators

220. (1) The company in general meetings shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them.

(2) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator sanctions the continuance thereof.

Power to fill vacancy in office of liquidators

221. (1) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(3) The meeting shall be held in manner provided by this Act or by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the Court.

Power of liquidator to accept shares etc. as consideration for sale of property of company

222. (1) Where a company is proposed to be, or is in course of being, wound up altogether voluntarily and the whole or part of its business or property is proposed to be transferred or sold to another company, whether a company within the meaning of this Act or not (in this section referred to as the transferee company), the liquidator of the first mentioned company (in this section referred to as the transferor company) may —

(a) with the sanction of a special resolution of that company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive in compensation or part compensation for the transferor sale, shares, policies or other like interests in the transferee company, for distribution among the members of the transferor company; or

(b) enter into any other arrangement whereby the members of the transferor company may, *in lieu* of receiving cash, shares, policies or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the transferee company.

(2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.

(3) If any members of the transferor company who did not vote in favour of the special resolution expresses his dissent therefrom in writing addressed to the liquidator and left at the registered office of the company within 7 days after the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration in manner provided by this section.

(4) If the liquidator elects to purchase the member's interest, the purchase money must be paid before the company is dissolved and be raised by the liquidator in such manner as may be determined by special resolution.

(5) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators but, if an order is made within a year for winding up the company by or subject to the supervision of

the Court, the special resolution shall not be valid unless sanctioned by the Court.

(6) For the purposes of an arbitration under this section, the provisions of the Companies Clauses Consolidation Act 1845 with respect to the settlement of disputes by arbitration shall be incorporated with this Act, and in the construction of those provisions —

(a) the company shall mean the transferor company;

(b) this Act shall be deemed to be the special Act; and

(c) any appointment by such incorporated provisions directed to be made under the hand of the secretary, or any two of the directors, may be made under the hand of the liquidator or, if there is more than one liquidator then of any two or more of the liquidators, and all powers given by such Act to the Board of Trade shall be exercised by His Majesty the Sultan and Yang Di-Pertuan*.

Duty of liquidator to call general meeting at end of each year

223. (1) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) If the liquidator fails to comply with this section, he is guilty of an offence and liable on conviction to a fine of $500.

Final meeting and dissolution

224. (1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company for the purpose of laying before it the account and giving any explanation thereof.

* Transferred to the Minister of Law** with effect from 31st December 1988 — *[S 31/1988]*
**Transferred further to the Registrar of Companies with effect from 16th September 1998 — *[S 32/1998]*

(2) The meeting shall be called by advertisement in the *Gazette*, specifying the time, place and object thereof, and published one month at least before the meeting.

(3) Within 3 weeks after the meeting, the liquidator shall send to the Registrar a copy of the account and shall make a return to him of the holding of the meeting and of its date, and if the copy is not sent or the return is not made in accordance with this subsection, the liquidator is guilty of an offence and liable on conviction to a fine of $25 for every day during which the default continues:

Provided that, if a *quorum* is not present at the meeting, the liquidator shall, *in lieu* of the return hereinbefore mentioned, make a return that the meeting was duly summoned and that no *quorum* was present there at, and upon, such a return being made the provisions of the subsection as to the making of the return shall be deemed to have been complied with.

(4) The Registrar on receiving the account and either of the returns hereinbefore mentioned shall forthwith register them and on the expiration of 3 months from the registration of the return, the company shall be deemed to be dissolved:

Provided that the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(5) It shall be the duty of the person on whose application an order of the Court under this section is made, within 7 days after the making of the order, to deliver to the Registrar an office copy of the order for registration and if that person fails to do so, he is guilty of an offence and liable on conviction to a fine of $25 for every day during which the default continues.

PROVISIONS APPLICABLE TO CREDITORS' VOLUNTARY WINDING UP

Provisions applicable to creditors' winding up

225. The provisions contained in sections 226, 227, 228, 229, 230, 231, 232 and 233 apply in relation to a creditors' voluntary winding up.

Meeting of creditors

226. (1) The company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the said meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of such meeting of the company.

(2) The company shall cause notice of the meeting of the creditors to be advertised once in the *Gazette* and once at least in two local newspapers circulating in the district where the registered office or principal place of business of the company is situate.

(3) The directors of the company shall —

(a) cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claim to be laid before the meeting of creditors to be held as aforesaid; and

(b) appoint one of their number to preside at the said meeting.

(4) It shall be the duty of the director appointed to preside at the meeting of creditors to attend the meeting and preside thereat.

(5) If the meeting of the company at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors held in pursuance of subsection (1) shall have effect as if it had been passed immediately after the passing of the resolution for winding up the company.

(6) If default is made —

(a) by the company in complying with subsections (1) and (2);

(b) by the directors of the company in complying with subsection (3);

(c) by any director of the company in complying with subsection (4),

the company, directors or director, as the case may be, is guilty of an offence and liable on conviction to a fine of $1,000 and, in the case of default by the company, every officer of the company who is in default shall be liable to the like penalty.

Appointment of liquidator

227. The creditors and the company at their respective meetings mentioned in section 226 may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company and if the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator and if no person is nominated by the creditors the person, if any, nominated by the company shall be liquidator:

Provided that in the case of different persons being nominated any director, member or creditor of the company may, within 7 days after the date on which the nomination was made by the creditors, apply to the Court for an order either directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or appointing some other person to be liquidator instead of the person appointed by the creditors.

Appointment of committee of inspection

228. (1) The creditors at the meeting to be held in pursuance of section 226 or at any subsequent meeting may, if they think fit, appoint a committee of inspection consisting of not more than five persons, and if such a committee is appointed the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee not exceeding five in number:

Provided that the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the Court otherwise directs, be qualified to act as members of the committee, and on any application to the Court under this provision the Court may, if it thinks fit, appoint other

persons to act as such members in place of the persons mentioned in the resolution.

(2) Subject to the provisions of this section and to general rules, the provisions of section 192 (except subsection (1)) apply with respect to a committee of inspection appointed under this section as they apply with respect to a committee of inspection appointed in a winding up by the Court.

Fixing of liquidators' remuneration and cesser of directors' powers

229. (1) The committee of inspection or if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators.

(2) On the appointment of a liquidator, all the powers of the directors shall cease, except so far as the committee of inspection, or if there is no such committee, the creditors sanction the continuance thereof.

Power to fill vacancy in office of liquidator

230. If a vacancy occurs by death, resignation or otherwise in the office of a liquidator, other than a liquidator appointed by or by the direction of the Court, the creditors may fill the vacancy.

Application of section 222 to creditors' voluntary winding up

231. The provisions of section 222 apply in the case of a creditors' voluntary winding up as in the case of a members' voluntary winding up, with the modification that the powers of the liquidator under that section shall not be exercised except with the sanction either of the Court or of the committee of inspection.

Duty of liquidator to call meetings of company and of creditors at end of each year

232. (1) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company and a meeting of creditors at the end of the first year from the commencement of the winding up, and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) If the liquidator fails to comply with this section, he is liable to a fine of $500.

Final meeting and dissolution

233. (1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors for the purpose of laying the account before the meetings and giving any explanation thereof.

(2) Each such meeting shall be called by advertisement in the *Gazette* specifying the time, place and object thereof, and published one month at least before the meeting.

(3) Within 3 weeks after the date of the meetings, or, if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall send to the Registrar a copy of the account, and shall make a return to him of the holding of the meetings of their dates, and if the copy is not sent or the return is not made in accordance with this subsection, the liquidator is guilty of an offence and liable on conviction to a fine of $50 for every day during which the default continues:

Provided that, if a *quorum* is not present at either such meeting, the liquidator shall *in lieu* of the return hereinbefore mentioned, make a return that the meeting was duly summoned and that no *quorum* was present thereat, and upon such a return being made the provisions of this subsection as to the making of the return shall, in respect of the meeting, be deemed to have been complied with.

(4) The Registrar on receiving the account and in respect of each such meeting either of the returns hereinbefore mentioned shall forthwith register them, and on the expiration of 3 months from the registration thereof the company shall be deemed to be dissolved:

Provided that the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(5) It shall be the duty of the person on whose application an order of the Court under this section is made, within 7 days after the making of the order, to deliver to the Registrar an office copy of the orders for registration

and if that person fails to do so, he is guilty of an offence and liable on conviction to a fine of $25 for every day during which the default continues.

PROVISIONS APPLICABLE TO EVERY VOLUNTARY WINDING UP

Provisions applicable to every voluntary winding up

234. The provisions contained in sections 235, 236, 237, 238, 239, 240, 241 and 242 apply to every voluntary winding up whether a members' or a creditors' winding up.

Distribution of property of company

235. Subject to the provisions of this Act as to preferential payments, the property of a company shall, on its winding up, be applied in satisfaction of its liabilities *pari passu* and, subject to such application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

Powers and duties of liquidator in voluntary winding up

236. (1) The liquidator may —

(a) in the case of a members' voluntary winding up, with the sanction of an extraordinary resolution of the company and, in the case of a creditors' voluntary winding up, with the sanction of either the Court or the committee of inspection, exercise any of the powers given by section 184(1)*(d)*, *(e)* and *(f)* to a liquidator in a winding up by the Court;

(b) without sanction, exercise any of the other powers by this Act given to the liquidator in a winding up by the Court;

(c) exercise the power of the Court under the Act of settling a list of contributories, and the list of contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories;

(d) exercise the power of the Court of making calls;

(e) summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution or for any other purpose he may think fit.

(2) The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.

(3) When several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as may be determined at the time of their appointment or, in default of such determination, by any number not less than two.

Court may appoint and remove liquidator in voluntary winding up

237. (1) If from any cause whatever there is no liquidator acting, the Court may appoint a liquidator.

(2) The Court may, on cause shown, remove a liquidator and appoint another liquidator.

Notice by liquidator of his appointment

238. (1) The liquidator shall, within 5 weeks after his appointment, deliver to the Registrar for registration a notice of his appointment in the form prescribed.

(2) If the liquidator fails to comply with the requirements of this section, he is guilty of an offence and liable on conviction to a fine of $25 for every day during which the default continues.

Arrangement, when binding on creditors

239. (1) Any arrangement entered into between a company about to be, or in the course of being, wound up and its creditors shall, subject to the right of appeal under this section, be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors.

(2) Any creditor or contributory may, within 3 weeks from the completion of the arrangement, appeal to the Court against it and the Court may thereupon, as it thinks just, amend, vary or confirm the arrangement.

Power to apply to Court to have questions determined or powers exercised

240. (1) The liquidator or any contributory or creditor may apply to the Court to determine any question arising in the winding up of a company or to exercise, as respects the enforcing of calls or any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court.

(2) The Court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit or may make such other order on the application as it thinks just.

Costs of voluntary winding up

241. All costs, charges and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims.

Saving for rights of creditors and contributories

242. The winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the Court but in the case of an application by a contributory, the Court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.

(iv) WINDING UP SUBJECT TO SUPERVISION OF COURT

Power to order winding up subject to supervision

243. When a company has passed a resolution for voluntary winding up, the Court may make an order that the voluntary winding up shall continue but subject to such supervision of the Court and with such liberty for creditors, contributories or others to apply to the Court, and generally on such terms and conditions, as the Court thinks just.

Effect of petition for winding up subject to supervision

244. A petition for the continuance of voluntary winding up subject to the supervision of the Court shall, for the purpose of giving jurisdiction to the Court over actions, be deemed to be a petition for winding up by the Court.

Application of sections 168 and 169 to winding up subject to supervision

245. A winding up subject to the supervision of the Court shall, for the purposes of sections 168 and 169, be deemed to be a winding up by the Court.

Power of Court to appoint or remove liquidators

246. (1) Where an order is made for winding up subject to supervision, the Court may by that or any subsequent order appoint an additional liquidator.

(2) A liquidator appointed by the Court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position, as if he had been duly appointed in accordance with the provisions of this Act with respect to the appointment of liquidators in a voluntary winding up.

(3) The Court may remove any liquidator so appointed by the Court or any liquidator continued under the supervision order and fill any vacancy occasioned by the removal or by death or resignation.

Effect of supervision order

247. (1) Where an order is made for a winding up subject to supervision, the liquidator may, subject to any restrictions imposed by the Court, exercise all his powers, without the sanction or intervention of the Court in the same manner as if the company were being wound up altogether voluntarily:

Provided that the powers specified in sections 184(1)*(d)*, *(e)* and *(f)*, shall not be exercised by the liquidator except with the sanction of the Court or, in a case where before the order the winding up was a creditors' voluntary winding up, with the sanction of either the Court or the committee of inspection.

(2) A winding up subject to the supervision of the Court is not a winding up by the Court for the purpose of the provisions of this Act which are set out in the Seventh Schedule but, subject as aforesaid, an order for a winding up subject to supervision shall for all purposes be deemed to be an order for winding up by the Court:

Provided that where the order for winding up subject to supervision was made in relation to a creditors' voluntary winding up in which a committee of inspection had been appointed, the order shall be deemed to be an order for winding up by the Court for the purpose of section 192 (except subsection (1) thereof), except in so far as the operation of that section is excluded in a voluntary winding up by general rules.

(v) PROVISIONS APPLICABLE TO EVERY MODE OF WINDING UP

PROOF AND RANKING OF CLAIMS

Debts of all descriptions to be proved

248. In every winding up (subject in the case of insolvent companies to the application in accordance with the provisions of this Act of the law of bankruptcy), all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

Application of bankruptcy rules in winding up of insolvent companies

249. In the winding up of an insolvent company registered in Brunei Darussalam the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of bankruptcy in Brunei Darussalam with respect to the estates of persons adjudged bankrupt, and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up, and make such claim against the company as they respectively are entitled to by virtue of this section.

Preferential payments

250. (1) In a winding up, there shall be paid in priority to all other debts —

(a) the following rates and taxes —

(i) all rates due to any Municipal Board constituted under the Municipal Boards Act (Chapter 57);

(ii) income tax and other tax assessed on the company up to the 31st of December next before that date and not exceeding in the whole one year's assessment;

(b) all wages, or salary of any clerk, servant, labourer or workman not exceeding $1,000 for each whether payable for time or piece work or whether or not payable wholly or in part by way of commission in respect of services rendered to the company during the period of 5 months next before the relevant date or the date of the termination of his service if the latter occurs within 12 months of and precedes the relevant date:

Provided that, without prejudice to the conditions and restrictions imposed upon contracts and agreements to labour by the Employment Order, 2009 (S 37/2009), where any clerk, servant, labourer or workman has entered into a contract for the payment of his wages or any part thereof in a lump sum at the end of the year of hiring, the priority under this section shall extend to the whole of such sum, or a part there of as the Court may decide to be due under the contract, proportionate to the time of service up to the relevant date;

(c) the deposit liabilities as defined in section 2 of the Banking Order, 2006 (S 45/2006);

[S 45/2006]

(d) the deposit liabilities as defined in section 2(1) of the Islamic Banking Order, 2008 (S 96/2008).

[S 96/2008]

(2) Where any payment on account of wages or salary has been made to any clerk, servant, workman or labourer in the employment of a company out of money advanced by some person for that purpose, that person shall in a winding up have a right of priority in respect of the money so advanced and paid-up to the amount by which the sum in respect of which that clerk, servant, workman or labourer would have been entitled to priority in the winding up has been diminished by reason of the payment having been made.

(3) The debts referred to in subsection (1) shall —

(a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and

(b) in the case of a company registered in Brunei Darussalam, so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under floating charge created by the company and be paid accordingly out of any property comprised in or subject to that charge.

(4) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them.

(5) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within 3 months next before the date of a winding up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof:

Provided that, in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(6) In this section, "the relevant date" means —

(a) in the case of a company order to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding up order;

(b) in any other case, the date of the commencement of the winding up.

EFFECT OF WINDING UP ON ANTECEDENT AND OTHER TRANSACTIONS

Fraudulent preference

251. (1) Any conveyance, mortgage, delivery of goods, payment, execution or other act relating to property which would, if made or done by or against an individual, be deemed in his bankruptcy a fraudulent preference shall, if made or done by or against a company, be deemed, in the event of its being wound up, a fraudulent preference of its creditors and be invalid accordingly.

(2) For the purposes of this section, the commencement of the winding up shall be deemed to correspond with the presentation of the bankruptcy petition in the case of an individual.

(3) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void to all intents.

Effect of floating charge

252. Where a company is being wound up, a floating charge on the undertaking or property of the company created within 6 months of the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of 5 *per cent per annum.*

Disclaimer of onerous property in case of company wound up

253. (1) Where any part of the property of a company which is being wound up consists of land of any tenure burdened with onerous covenants, or shares or stock in companies of unprofitable contracts, or of any other property that is unsaleable or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act or to the payment of any sum of money, the liquidator of the company, notwithstanding that he has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, may, with the leave of the Court and subject to the provisions of this section, by writing signed by him, at any time within one year after the commencement of the

winding up or such extended period as may be allowed by the Court, disclaim the property:

Provided that, where any such property has not come to the knowledge of the liquidator within one month after the commencement of the winding up, the power under this section of disclaiming the property may be exercised at any time within one year after he has become aware thereof or such extended period as may be allowed by the Court.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest and liabilities of the company, and the property of the company, in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(3) The Court, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the Court thinks just.

(4) The liquidator shall not be entitled to disclaim any property under this section in any case where an application in writing has been made to him by any persons interested in the property requiring him to decide whether he will or will not disclaim, and the liquidator has not, within a period 28 days after the receipt of the application or such further period as may be allowed by the Court, given notice to the applicant that he intends to apply to the Court for leave to disclaim, and in the case of a contract, if the liquidator, after such an application as aforesaid, does not within such period or further period disclaim the contract, the company shall be deemed to have adopted it.

(5) The Court may, on the application of any person who is as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the Court thinks just, and any damages payable under the order to any such person may be proved by him as a debt in the winding up.

(6) The Court may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not

discharged by this Act in respect of any disclaimed property and on hearing any such persons as it thinks fit make an order for the vesting of the property in or the delivery of the property —

(a) to any persons entitled thereto;

(b) to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid; or

(c) to a trustee for him,

and on such terms as the Court thinks just, and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose:

Provided that where the property disclaimed is of a leasehold nature, the Court shall not make a vesting order in favour of any person claiming under the company, whether as under-lessee or as mortgagee by demise, including a charge by way of legal mortgage, except upon the terms of making that person —

(a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up; or

(b) if the Court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date,

and in either event (if the case so requires) as if the lease had comprised only the property comprised in the vesting order, and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property and if there is no person claiming under the company who is willing to accept an order upon such terms, the Court shall have power to vest the estate and interest of the company in the property in any person liable either personally or in a representative character, and either alone or jointly with the company to perform the lessee's covenants in the lease, freed and discharged from all estates, incumbrances and interests created therein by the company.

(7) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the injury and may accordingly prove the amount as a debt in the winding up.

Restriction of rights of creditor as to execution or attachment in case of company being wound up

254. (1) Where a creditor has issued execution against the goods or lands of a company or has attached any debt due to the company, and the company is subsequently wound up, he shall not be entitled to retain the benefit of the execution or attachment against the liquidator in the winding up of the company unless he has completed the execution or attachment before the commencement of the winding up:

Provided that —

(a) where any creditor has had notice of a meeting having been called at which a resolution for voluntary winding up is to be proposed, the date on which the creditor so had the notice shall for the purposes of the foregoing provision be substituted for the date of the commencement of the winding up; and

(b) a person who purchases in good faith under a sale by the bailiff any goods of a company on which an execution has been levied shall in all cases acquire a good title to them against the liquidator.

(2) For the purposes of this section, an execution against goods shall be taken to be completed by seizure and sale, and an attachment of a debt shall be deemed to be completed by receipt of the debt, and an execution against land, shall be deemed to be completed by registration of the prohibitory order in the Land Office, and in the case of an equitable, interest, by the appointment of a receiver.

(3) In this section —

"bailiff" includes any officer charged with the execution of a writ or other process;

"goods" includes all chattels personal.

Duties of bailiff as to goods taken in execution

255. (1) Where any goods of a company are taken in execution and before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the bailiff that a provisional liquidator, has been appointed or that a winding up order has been made or that a resolution for voluntary winding up has been passed, the bailiff shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator, but the costs of the execution shall be a first charge on the goods or money so delivered, and the liquidator may sell the goods, or a sufficient part thereof for the purpose of satisfying that charge.

(2) Where under an execution in respect of a judgment, for a sum exceeding $200 the goods of a company are sold or money is paid in order to avoid sale, the bailiff shall deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance for 14 days, and if within that time notice is served on him of a petition for the winding up of the company having been presented or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding up of the company and an order is made or a resolution is passed, as the case may be, for the winding up of the company, the bailiff shall pay the balance to the liquidator, who shall be entitled to retain it as against the execution creditor.

(3) In this section —

"bailiff" includes any officer charged with the execution of a writ or other process;

"goods" includes all chattels personal.

OFFENCES ANTECEDENT TO OR IN COURSE OF WINDING UP

Offences by officers of companies in liquidation

256. (1) If any person being a past or present director, manager or other officer of a company which at the time of the commission of the alleged offence is being wound up, whether, by or under the supervision of the Court or voluntarily, or is subsequently ordered to be wound up by the Court or subsequently passes a resolution for voluntary winding up —

(a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the property, real and personal, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company;

(b) does not deliver up to the liquidator or as he directs, all such part of the real and personal property of the company as is in his custody or under his control and which he is required by law to deliver up;

(c) does not deliver up to the liquidator or as he directs, all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up;

(d) within one year next before the commencement of the winding up or at any time thereafter conceals any part of the property of the company to the value of $100 or upwards, or conceals any debt due to or from the company;

(e) within one year next before the commencement of the winding up or at any time thereafter fraudulently removes any part of the property of the company to the value of $50 or upwards;

(f) makes any material omission in any statement relating to the affairs of the company;

(g) knowing or believing that a false debt has been proved by any person under the winding up, fails for the period of a month to inform the liquidator thereof;

(h) after the commencement of the winding up prevents the production of any book or paper affecting or relating to the property or affairs of the company;

(i) within one year next before the commencement of the winding up or at any time thereafter, conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to the property or affairs of the company;

(j) within one year next before the commencement of the winding up or at any time thereafter, makes or is privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company;

(k) within one year next before the commencement of the winding up or at any time thereafter, fraudulently parts with, alters or makes any omission in, or is privy to the fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company;

(l) after the commencement of the winding up or at any meeting of the creditors of the company, within one year next before the commencement of the winding up, attempts to account for any part of the property of the company by fictitious losses or expenses;

(m) has within one year next before the commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtained any property for or on behalf of the company on credit which the company does not subsequently pay for;

(n) within one year next before the commencement of the winding up or at any time thereafter, under the false pretence that the company is carrying on its business, obtains on credit for or on behalf of the company, any property which the company does not subsequently pay for;

(o) within one year next before the commencement of the winding up or at any time thereafter pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing is in the ordinary way of the business of the company; or

(p) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up,

he is guilty of an offence and liable on conviction to, in the case of offences mentioned respectively in paragraphs *(m)*, *(n)* and *(o),* imprisonment for 5 years, and in any other case, imprisonment for 2 years:

Provided that it shall be a good defence to a charge under any of paragraphs *(a)*, *(b)*, *(c)*, *(d)*, *(f)*, *(n)* and *(o)*, if the accused proves that he had no intent to defraud, and to a charge under any of paragraphs *(h)*, *(i)* and *(j)*, if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(2) Where any person pawns, pledges or disposes of any property in circumstances which amount to a misdemeanour under subsection (1)*(o),* any person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in such circumstances as aforesaid is guilty of an offence and liable on conviction to imprisonment for 5 years.

(3) For the purposes of subsection (1)*(o)*, a person who has sent out of Brunei Darussalam or purports to have sent out of Brunei Darussalam any property which has been obtained by or on behalf of the company on credit and not paid for, shall be deemed, unless he proves the contrary, to have disposed of such otherwise than in the ordinary way of the business of the company, if the person to whom such property was or is purported to have been sent cannot be found or does not pay for the same within a reasonable time after being required to do so by the liquidator of the company.

(4) For the purposes of this section, "director" shall include any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

Penalty for falsification of books

257. If any director, manager or other officer, or contributory of any company being wound up destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account, or document belonging to the company with intent to defraud or deceive any person, he is guilty of an offence and liable on conviction to imprisonment for 2 years.

Frauds by officers of companies which have gone into liquidation

258. If any person being at the time of the commission of the alleged offence a director, manager or other officer of the company which is subsequently ordered to be wound up by the Court or subsequently passes a resolution for voluntary winding up —

(a) has by false pretences or by means of any other fraud induced any person to give credit to the company;

(b) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of or charge on or has caused or connived at the levying of any execution against, the property of the company; or

(c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since, or within 2 months before, the date of any unsatisfied judgment or order for payment of money obtained against the company,

he is guilty of an offence and liable on conviction to imprisonment for 2 years.

Liability where proper accounts not kept

259. (1) If, where a company is wound up, it is shown that proper books of account were not kept by the company throughout the period of 2 years immediately preceding the commencement of the winding up, every director, manager or other officer of the company who was knowingly a party to or connived at the default of the company, unless he shows that he acted honestly or that in the circumstances in which the business of the company was carried on the default was excusable, is guilty of an offence and liable on conviction to imprisonment for one year.

(2) For the purposes of this section, proper books of account shall be deemed not to have been kept in the case of any company if there have not been kept such books or accounts as are necessary, to exhibit and explain the transactions and financial position of the trade or business of the company, including books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, statements of the annual stocktakings and (except in the case of goods sold by way of ordinary retail trade) of all goods sold and purchased, showing the goods and the buyers and sellers, thereof in sufficient detail to enable those goods and those buyers and sellers to be identified.

Responsibility of directors for fraudulent trading

260. (1) If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the Court, on the application of the Official Receiver, or the liquidator or any creditor or contributory of the company, may, if it thinks proper to do so, declare that any of the directors, whether past or present, of the company who were knowingly parties to the carrying on of the business in manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Court may direct.

(2) Where the Court makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration, and in particular may make provision for making the liability of any such director under the declaration a charge on —

(a) any debt or obligation due from the company to him; or

(b) any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in —

(i) him;

(ii) any company or person on his behalf; or

(iii) any person claiming as assignee from or through the director, company or person,

and may make such further order as may be necessary for the purpose of enforcing any charge imposed under this subsection.

For the purposes of this subsection, "assignee" includes any person to whom or in whose favour, by the directions of the director, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any, of the matters on the ground of which the declaration is made.

(3) Where any business of a company is carried on with such intent or for such purpose as is mentioned in subsection (1), every director of the

company who was knowingly a party to the carrying on of the business in manner aforesaid is guilty of an offence and liable on conviction to imprisonment for one year.

(4) The Court may, in the case of any person in respect of whom a declaration has been made under subsection (1) or who has been convicted of an offence under subsection (3), order that that person shall not, without the leave of the Court, be a director of, or in any way, whether directly or indirectly, be concerned in or take part in the management of, a company for such period, not exceeding 5 years, from the date of the declaration or of the conviction, as the case may be, as may be specified in the order, and if any person acts in contravention of an order made under this subsection, he is guilty of an offence and liable on conviction to a fine of $5,000 and imprisonment for 2 years.

In this subsection, "the Court in relation to making of an order" means the Court by which the declaration was made or the Court before which the person was convicted, as the case may be, and in relation to the granting of leave means any Court having jurisdiction to wind up the company.

(5) For the purposes of this section, "director" shall include any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

(6) The provisions of this section shall have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is to be made, and where the declaration under subsection (1) is made in the case of a winding up the declaration shall be deemed to be a final judgment for the purpose of any written law relating to bankruptcy.

(7) It shall be the duty of the Official Receiver or of the liquidator to appear on the hearing of an application for leave under subsection (4), and on the hearing of an application under that subsection or under subsection (1) the Official Receiver or the liquidator, as the case may be, may himself give evidence or call witnesses.

Power of Court to assess damages against delinquent directors etc.

261. (1) If, in the course of winding up a company, it appears that any person who has taken part in the formation or promotion of the company, or

any past or present director, manager, liquidator or any officer of the company, has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of the Official Receiver, liquidator or any creditor or contributory —

(a) examine into the conduct of the promoter, director, manager, liquidator or officer; and

(b) compel him to —

(i) repay or restore the money or property or any part thereof respectively with interest at such rate as the Court thinks just; or

(ii) contribute such sum to the assets of the company by way of compensation in respect of the misapplication retainer, misfeasance or breach of trust as the Court thinks just.

(2) The provisions of this section shall have effect notwithstanding that the offence is one for which the offender may be criminally liable.

(3) Where, in the case of a winding up, an order for payment of money is made under this section the order shall be deemed to be a final judgment within the meaning of section 3(1)*(g)* of the Bankruptcy Act (Chapter 67).

Prosecution of delinquent officers and members of company

262. (1) If it appears to the Court in the course of a winding up by, or subject to the supervision of, the Court, that any past or present director, manager or other officer, or any member, of the company has been guilty of an offence in relation to the company for which he is criminally liable, the Court may, either on the application of any person interested in the winding up or of its own motion, direct the liquidator either himself to prosecute the offender or to refer the matter to the Public Prosecutor.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present director, manager or other officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, he shall forthwith report the matter, to the Public Prosecutor, and shall furnish to him such information

and give to him such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of the liquidator and relating to the matter in question as he may require.

(3) Where any report is made under subsection (2) to the Public Prosecutor, he may, if he thinks fit, refer the matter to the Official Receiver for further inquiry, and he shall thereupon investigate the matter and may, if he thinks it expedient, apply to the Court for an order conferring on him or any person designated by him for the purpose with respect to the company concerned all such powers of investigating the affairs of the company as are provided by this Act in the case of a winding up by the Court.

(4) If on any report to the Public Prosecutor under subsection (2) it appears to him that the case is not one in which proceedings ought to be taken by him, he shall inform the liquidator accordingly; and thereupon subject to the previous sanction of the Court, the liquidator may himself take proceedings against the offender.

(5) If it appears to the Court in the course of a voluntary winding up that any past or present director, manager or other officer, or any member, of the company has been guilty, as aforesaid, and that no report with respect to the matter has been made by the liquidator to the Public Prosecutor under subsection (2), the Court may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly the provisions of this section shall have effect as though the report had been made in pursuance of the provisions of subsection (2).

(6) If, where any matter is reported or referred to the Public Prosecutor under this section, he considers that the case is one in which a prosecution ought to be instituted and further, that it is desirable in the public interest that the proceedings in the prosecution should be conducted by him, he shall institute proceedings accordingly, and it shall be the duty of the liquidator and of every officer and agent of the company past and present (other than the defendant in the proceedings) to give him all assistance in connection with the prosecution which he is reasonably able to give.

For the purposes of this subsection, "agent", in relation to a company, shall be deemed to include any banker or advocate of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

(7) If any person fails or neglects to give assistance in manner required by subsection (6), the Court may, on the application of the Public Prosecutor, direct that person to comply with the requirements of that subsection and where any such application is made with respect to a liquidator the Court may, unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him to do so, direct that the costs of the application shall be borne by the liquidator personally.

(8) The Court may direct that the whole or part of any costs and expenses properly incurred by the liquidator in proceedings duly brought by him under this section shall be defrayed as expenses incurred by the liquidator under this Act in relation to the winding up of companies. Subject to any direction under this subsection and to any mortgages or charges on the assets of the company and any debts to which priority is given by section 250, all such costs and expresses as aforesaid shall be payable out of those assets in priority to all other liabilities payable thereout.

SUPPLEMENTARY PROVISIONS AS TO WINDING UP

Disqualification for appointment as liquidator

263. (1) A body corporate shall not be qualified for appointment as liquidator of a company, whether in a winding up by or under the supervision of the Court or in a voluntary winding up, and any appointment made in contravention of this provision shall be void.

(2) Nothing in this section shall disqualify a body corporate from acting as liquidator of a company if acting under an appointment made before 1st January 1957, being the date of commencement of this Act, but subject as aforesaid any body corporate which acts as liquidator of a company is guilty of an offence and liable on conviction to a fine of $1,000.

Enforcement of duty of liquidator to make returns etc.

264. (1) If any liquidator, who has made any default in filing, delivering or making any return, account or other document, or in giving any notice which he is by law required to file, deliver, make or give, fails to make good the default within 14 days after the service on him of a notice requiring him to do so, the Court may, on an application made to the Court by any contributory or creditor of the company or by the Registrar, make an order

directing the liquidator to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the liquidator.

(3) Nothing in this section shall be taken to prejudice the operation of any written law imposing penalties on a liquidator in respect of any such default as aforesaid.

Notification that company is in liquidation

265. (1) Where a company is being wound up, whether by or under the supervision of the Court or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company or a liquidator of the company, or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up.

(2) If default is made in complying with this section, the company and every director, manager, secretary or other officer of the company, and every liquidator of the company and every receiver or manager, who knowingly and wilfully authorises or permits the default is guilty of an offence and liable on conviction to a fine of $1,000.

Exemption of certain documents from stamp duty on winding up of companies

266. In the case of a winding up by the Court of a company registered in Brunei Darussalam, or of a creditors' voluntary winding up of such a company —

(a) every assurance relating solely to freehold or leasehold property, or to any mortgage, charge or other incumbrance on, or any estate, right or interest, in, any real or personal property, which forms part of the assets of the company and which, after the execution of the assurance, either at law or in equity, is or remains part of the assets of the company; and

(b) every power of attorney, proxy paper, writ, order, certificate, affidavit bond or other instrument or writing relating solely to the property of any company which is being so wound up, or to any proceedings under any such winding up,

shall be exempt from duties chargeable under the Stamp Act (Chapter 34).

In this section, "assurance" includes deed, conveyance, assignment and surrender.

Books of company to be evidence

267. Where a company is being wound up, all books and papers of the company and of the liquidators shall, as between the contributories of the company be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

Disposal of books and papers of company

268. (1) Where a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidators may be disposed as follows —

(a) in the case of a winding up by, or subject to the supervision of, the Court, in such way as the Court directs;

(b) in the case of a members' voluntary winding up, in such way as the company by extraordinary resolution directs, and in the case of a creditors' voluntary winding up, in such way as the committee of inspection or, if there is no such committee as the creditors of the company, may direct.

(2) After 5 years from the dissolution of the company no responsibility shall rest on the company, the liquidators or any person to whom the custody of the books and papers has been committed, by reason of any book or paper not being forthcoming to any person claiming to be interested therein.

(3) Provision may be made by general rules for enabling the Official Receiver to prevent, for such period (not exceeding 5 years from the dissolution of the company) as he thinks proper, the destruction of the books and papers of the company which has been wound up, and for enabling any creditor or contributory of the company to make representations to him, and to appeal to the Court from any direction which may be given by him in the matter.

(4) If any person acts in contravention of any general rules made for the purposes of this section or of any direction of the Official Receiver thereunder, he is guilty of an offence and liable on conviction to a fine of $1,000.

Information as to pending liquidations

269. (1) If where a company is being wound up, the winding up is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, send to the Registrar a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation.

(2) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement and to receive a copy thereof or extract therefrom.

(3) If a liquidator fails to comply with this section, he is liable to a fine of $25 for each day during which the default continues, and any person untruthfully stating himself as aforesaid to be a creditor or contributory shall be guilty of a contempt of Court and shall, on the application of the liquidator or of the Official Receiver, be punishable accordingly.

Unclaimed assets to be paid to companies liquidation account

270. (1) If, where a company is being wound up it appears either from any statement sent to the Registrar under section 269 or otherwise that a liquidator has in his hands or under his control any money representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for 6 months after the date of their receipt, the liquidator shall forthwith pay the said money to the companies liquidation account, and shall be entitled to the prescribed certificate of receipt for the money so paid, and that certificate shall be an effectual discharge to him in respect thereof.

(2) For the purpose of ascertaining and getting in any money payable into the bank in pursuance of this section, the liquidator may be called upon by the Court to account for any unclaimed or undistributed assets of the company and any failure to comply with the requisitions of the Court in this behalf may be dealt with as a contempt of Court.

(3) Any person claiming to be entitled to any money paid into the bank in pursuance of this section may apply to the Official Receiver for payment thereof, and the Official Receiver may, on a certificate by the liquidator that the person claiming is entitled, make an order for the payment to that person of the sum due.

(4) Any person dissatisfied with the decision of the Official Receiver in respect of a claim made in pursuance of this section may appeal to the Court.

Resolutions passed at adjourned meetings of creditors and contributories

271. Where after 1st January 1957, being the date of commencement of this Act, a resolution is passed at an adjourned meeting of any creditors or contributories of a company, the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed and shall not be deemed to have been passed on any earlier date.

SUPPLEMENTARY POWERS OF COURT

Meetings to ascertain wishes of creditors to contributories

272. (1) The Court may, as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories of the company as proved to it by any sufficient evidence and may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the Court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the Court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by this Act or the articles.

Judicial notice of signature of officers

273. In all proceedings under this Part, all Courts, judges, and persons judicially acting, and all officers, judicial or ministerial, of any Court, or employed in enforcing the process of any Court, shall take judicial notice of

the signature of any officer of the Supreme Court, and also of the official seal or stamp of the several offices of the Supreme Court, appended to or impressed on any document made, issued or signed under the provisions of this Part, or any official copy thereof.

Affidavits etc. in Brunei Darussalam and Commonwealth

274. (1) Any affidavit required to be sworn under the provisions or for the purposes of this Part may be sworn in Brunei Darussalam, or elsewhere within the Commonwealth, before any Court, judge or person lawfully authorised to take and receive affidavits or before any of Brunei Darussalam consuls or vice-consuls in any place outside Brunei Darussalam.

(2) All Courts, judges, justices, commissioners and persons acting judicially shall take judicial notice of the seal or stamp or signature, as the case may be, of any such Court, judge, person, consul or vice-consul attached, appended or subscribed to any such affidavit or to any other document to be used for the purposes of this Part.

PROVISIONS AS TO DISSOLUTION

Power of Court to declare dissolution of company void

275. (1) Where a company has been dissolved, the Court may at any time within 2 years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the Court to be interested, make an order, upon such terms as the Court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(2) It shall be the duty of the person on whose application the order was made, within 7 days after the making of the order or such further time as the Court may allow, to deliver to the Registrar for registration an office copy of the order and if that person fails to do so, he is guilty of an offence and liable on conviction to a fine of $25 for every day during which the default continues.

Registrar may strike defunct company off register

276. (1) Where the Registrar has reasonable cause to believe that a company is not carrying on business or in operation, he may send to the

company by post a letter inquiring whether the company is carrying on business or in operation.

(2) If the Registrar does not within one month of sending the letter receive any answer thereto, he shall, within 14 days after the expiration of the month, send to the company by post a registered letter referring to the first letter and stating that no answer thereto has been received and that if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the *Gazette* with a view to striking the name of the company off the register.

(3) If the Registrar either receives an answer to the effect that the company is not carrying on business or in operation, or does not within one month after sending the second letter receive an answer, he may publish in the *Gazette* and send to the company by post a notice, that at the expiration of 3 months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) If, in any case where a company is being wound up, the Registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up and the returns required to be made by the liquidator have not been made for a period of 6 consecutive months, the Registrar shall publish in the *Gazette* and send to the company or the liquidator, if any, a like notice as is provided in subsection (3).

(5) Where the Registrar is of the opinion that the registered office of a company or the name and address of a liquidator or subscriber to the memorandum of association of a company cannot be ascertained, or the Registrar is of the opinion that a letter or notice to be sent under subsection (1), (2), (3) or (4) is unlikely to be received by the person to whom it would be directed, it shall be sufficient compliance with the provisions of those subsections if the Registrar shall publish in the *Gazette* a notice stating that at the expiration of 3 months from the date of the publication of such notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(6) At the expiration of the time specified in any notice referred to in subsection (3), (4) or (5) the Registrar may, unless cause to the contrary is previously shown, strike its name off the register, and shall publish notice

thereof in the *Gazette* and on the publication in the *Gazette* of this notice the company shall be dissolved:

Provided that —

(a) the liability, if any, of every director, managing officer and member of the company shall continue and may be enforced as if the company had not been dissolved; and

(b) nothing in this subsection shall affect the power of the Court to wind up a company the name of which has been struck off the register.

(7) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the Court on an application made by the company or member or creditor before the expiration of 20 years from the publication in the *Gazette* of the notice aforesaid may, if satisfied that the company was at the time of the striking off carrying on business or in operation or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and upon an office copy of the order being delivered to the Registrar for registration the company shall be deemed to have continued in existence as if its name had not been struck off; and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(8) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business, and a letter or notice to be sent under this section to a company may be addressed to the company at its registered office or, if no office has been registered, to the care of some director or officer of the company or, if there is no director or officer of the company whose name and address are known to the Registrar, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

Property of dissolved company to be *bona vacantia*

277. Where a company is dissolved, all property and rights whatsoever vested in or held on trust for the company immediately before its dissolution (including leasehold property but not including property held by the company on trust for any other person) shall, subject and without prejudice

to any order which may at any time be made by the Court under sections 275 and 276, be deemed to be *bona vacantia* and shall accordingly belong to the Government of Brunei Darussalam, and subject to any necessary modification shall vest and may be dealt with in the same manner as other *bona vacantia* accruing to the Crown of England.

CENTRAL ACCOUNTS

Companies liquidation account

278. (1) An account, to be called the companies liquidation account, shall be kept by the Official Receiver at such bank as His Majesty the Sultan and Yang Di-Pertuan* may direct, and all moneys received by the Official Receiver in respect of proceedings under this Act in connection with the winding up of companies, shall be paid to that account.

(2) All payments out of money standing to the credit of the Official Receiver in the companies liquidation account shall be made in the prescribed manner.

Investment of surplus funds on general account

279. (1) Whenever the cash balance standing to the credit of the companies liquidation account is in excess of the amount which in the opinion of the Official Receiver is required for the time being to answer demands in respect of companies' estates, he shall notify the excess to the Permanent Secretary and shall pay over the whole or any part of that excess, as the Permanent Secretary may require, to the Permanent Secretary, to such account as the Permanent Secretary may direct, and the Permanent Secretary may invest the sums paid over, or any part thereof, in Government securities, to be placed to the credit of such account.

(2) When any part of the money so invested is, in the opinion of the Official Receiver, required to answer any demands in respect of companies' estates, he shall notify to the Permanent Secretary the amount so required, and the Permanent Secretary shall thereupon repay to the Official Receiver such sum as may be required to the credit of the companies liquidation account, and for that purpose may direct the sale of such part of such securities as may be necessary.

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* Transferred to the Minister of Law** with effect from 31st December 1988 — *[S 31/1988]*

**Transferred further to the Registrar of Companies with effect from 16th September 1998 — *[S 32/1998]*

(3) The income on investments under this section, any profits realised on the sale of such investments and any bank interest received shall be paid into the companies liquidation account, and the Official Receiver shall on or before the 31st day of December in each year transfer to the general revenue the accumulated balance of such income, profits and bank interest, after deducting therefrom any losses on the realisation of such investments.

Separate accounts of particular estates

280. (1) An account shall be kept by the Official Receiver of the receipts and payments in the winding up of each company and, when the cash balance standing to the credit of the account of any company is in excess of the amount which, in the opinion of the committee of inspection, is required for the time being to answer demands in respect of that company's estate, the Official Receiver shall, on the request of the committee, invest the amount not so required in Government securities, to be placed to the credit of such account for the benefit of the company.

(2) When any part of the money so invested is, in the opinion of the committee of inspection, required to answer any demands in respect of the estate of the company, the Official Receiver shall, on the request of the committee raise such sum as may be required by the sale of such part of such securities as may be necessary.

(3) The dividends on investments under this section shall be paid to the credit of the company.

RULES AND FEES

General rules and fees

281. (1) The Chief Justice may, with the concurrence of His Majesty the Sultan and Yang Di-Pertuan make general rules for carrying into effect the objects of this Act so far as relates to the winding up of companies, and also rules for the purposes of this Act generally, including rules as to costs.

(2) His Majesty the Sultan and Yang Di-Pertuan in Council* may make rules to provide for —

(a) the manner in which applications by persons desirous of being placed upon the authorised list of auditors shall be made;

(b) the examination of such applications and if thought fit of applicants by an Advisory Board;

(c) the establishment of an Advisory Board to advise His Majesty the Sultan and Yang Di-Pertuan in Council*** in relation to such applications and also as to whether the name of any person on the authorised list should be removed therefrom;

(d) anything which may require to be prescribed; and

(e) carrying this Act into effect.

(3) All rules made under this section shall be judicially noticed and shall have effect as if enacted by this Act.

(4) There shall be paid in respect of proceedings under this Act, where no fee is otherwise fixed, such fees as the Chief Justice may, with the sanction of His Majesty the Sultan and Yang Di-Pertuan direct, and he may direct by whom and in what manner the same are to be collected and accounted for.

PART VI

RECEIVERS AND MANAGERS

Disqualification for appointment as receiver

282. (1) A body corporate shall not be qualified for appointment as receiver of the property of a company.

(2) Any body corporate which acts as receiver as aforesaid shall be liable to a fine of $1,000.

* Transferred to the Minister of Law** with the approval of His Majesty the Sultan and Yang Di-Pertuan with effect from 31st December 1988 — *[S 31/1988]*

** Transferred further to the Registrar of Companies with effect from 16th September 1998 — *[S 32/1998]*

***Transferred to the Minister of Finance with effect from 31st December 1988 — *[S 31/1988]*

Power to appoint Official Receiver as receiver for debenture holders or creditors

283. Where an application is made to the Court to appoint a receiver on behalf of the debenture holders or other creditors of a company which is being wound up by the Court, the Official Receiver may be so appointed.

Notification that receiver or manager appointed

284. (1) Where a receiver or manager of the property of a company has been appointed, every invoice, order for goods or business letter issued by or on behalf of the company, or the receiver or manager or the liquidator of the company, being a document on or in which the name of the company appears, shall contain a statement that a receiver or manager has been appointed.

(2) If default is made in complying with requirements of this section, the company and every director, manager, secretary or other officer of the company, and every liquidator of the company, and every receiver or manager who knowingly and wilfully authorises or permits the default, is guilty of an offence and liable on conviction to a fine of $500.

Power of Court to fix remuneration on application of liquidator

285. The Court may, on an application made to the Court by the liquidator or a company, by order fix the amount to be paid by way of remuneration to any person who, under the powers contained in any instrument, has been appointed as receiver or manager of the property of the company, and may from time to time, on an application made either by the liquidator or by the receiver or manager, vary or amend any order, so made.

Delivery to Registrar of accounts of receivers and managers.

286. (1) Every receiver or manager of the property of a company who has been appointed under the powers contained in any instrument shall —

(a) within one month or such longer period as the Registrar may allow, after the expiration of the period of 6 months from the date of his appointment and of every subsequent period of 6 months; and

(b) within one month after he ceases to act as receiver or manager,

deliver to the Registrar for registration —

(i) an abstract in the prescribed form showing his receipts and his payments —

(A) during that period of 6 months; or

(B) where he ceases to act as aforesaid, during the period from the end of the period to which the last preceding abstract related up to the date of his so ceasing; and

(ii) the aggregate amount of his receipts and of his payments during all preceding periods since his appointment.

(2) Any receiver or manager who makes default in complying with the provisions of this section is guilty of an offence and liable on conviction to a fine of $50 for every day during which the default continues.

Enforcement of duty of receiver to make returns etc.

287. (1) If —

(a) any receiver of the property of a company, who has made default in filing, delivering or making any return, account or other document or in giving any notice, which a receiver is by law required to file, deliver, make or give, fails to make good the default within 14 days after the service on him of a notice requiring him to do so; or

(b) any receiver or manager of the property of a company who has been appointed under the powers contained in any instrument has, after being required at any time by the liquidator of the company to do so, failed to render proper accounts of his receipts and payments and payments and to pay over to the liquidator the amount properly payable to him,

the Court may, on an application made for the purpose, make an order directing the receiver or manager, as the case may be, to make good the default within such time as may be specified in the order.

(2) In the case of any such default as is mentioned in subsection (1)*(a),* an application for the purposes of this section may be

made by any member or creditor of the company or by the Registrar and the order may provide that all costs of and incidental to the application shall be borne by the receiver, and in the case of any such default as is mentioned in subsection (1)*(b),* the application shall be made by the liquidator.

(3) Nothing in this section shall be taken to prejudice the operation of any enactments imposing penalties on receivers in respect of such default as is mentioned in subsection (1)*(a)*.

PART VII

GENERAL PROVISIONS AS TO REGISTRATION

Appointment of Registrar of Companies etc. *[S 118/2010]*

288. His Majesty the Sultan and Yang Di-Pertuan shall appoint fit and proper persons to be the Registrar of Companies, Deputy Registrars and Assistant Registrars of Companies under and for the purposes of this Act.

Fees. *[S 118/2010]*

289. (1) There shall be paid to the Registrar —

(a) the fees specified in the Eight Schedule;

(b) such other fees as may be prescribed.

(2) The Registrar may add, vary or amend the fees specified in the Eight Schedule or prescribed under this Act.

(3) All fees paid to the Registrar shall be paid into the Treasury.

Inspection, production and evidence of documents kept by Registrar

290. (1) Any person may inspect the documents kept by the Registrar on payment of such fees as may be appointed by the Minister*, and person may require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document, to be certified by the Registrar, on payment for the certificate, certified copy or extract, of such fees as the Minister* may appoint.

* Transferred further to the Registrar of Companies with effect from 16th September 1998 — *[S 32/1998]*

(2) No process for compelling the production of any document kept by the Registrar shall issue from any Court except with the leave of that Court, and any such process if issued shall bear thereon a statement that it is issued with the leave of the Court.

(3) A copy of or extract from any document kept and registered at the office for the registration of companies, certified to be a true copy under the hand of the Registrar (whose official position it shall not be necessary to prove), shall in all legal proceedings be admissible in evidence as of equal validity with the original document.

Enforcement of duty of company to make returns to Registrar

291. (1) If a company, having made default in complying with any provision of this Act which requires it to file with, deliver or send to the Registrar any return, account or other document, or to give notice to him of any matter, fails to make good the default within 14 days after the service of a notice on the company requiring it to do so, the Court may, on an application made to the Court by any member or creditor of the company or by the Registrar, make an order directing the company and any officer thereof to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officers of the company responsible for the default.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a company or its officers in respect of any such default as aforesaid.

PART VIII

WINDING UP OF UNREGISTERED COMPANIES

Meaning of unregistered company

292. For the purposes of this Part, "unregistered company" shall include any partnership, any association and any company except —

(a) a company registered under this Act; or

(b) a partnership, association or company which consists of less than eight members and is not a foreign partnership, association or company.

Winding up of unregistered companies

293. (1) Subject to the provisions of this Part, any unregistered company may be wound up under this Act, and all the provisions of this Act with respect to winding up shall apply to an unregistered company, with the following exceptions and additions —

(a) no unregistered company shall be wound up under this Act voluntarily or subject to supervision;

(b) the circumstances in which an unregistered company may be wound up are as follows —

(i) the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;

(ii) the company is unable to pay its debts;

(iii) the Court is of opinion that it is just and equitable that the company should be wound up;

(c) an unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts if —

(i) a creditor by assignment or otherwise, to whom the company is indebted in a sum exceeding $500 then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary or some director, manager, or principal officer of the company, or by otherwise serving in such manner as the Court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for 3 weeks after the service of the demand neglected to pay the sum, or to secure or compound for it to the satisfaction of the creditor;

(ii) any action or other proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company, or from him in his character of member, and notice in writing of the institution of the action or proceeding having been served on the company by leaving the same at its principal place of business, or by delivering it to the secretary, or some director, manager, or principal officer of the company, or by otherwise serving the same in such manner as the Court may approve or direct, the company has not within 10 days after service of the notice paid, secured, or compounded for the debt or demand, or procured the action or proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against the action or proceeding, and against all costs, damages, and expenses to be incurred by him by reason of the same;

(iii) execution or other process issued on a judgment, decree or order obtained in any Court in favour of a creditor, against the company, or any member thereof as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied;

(iv) it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts.

(2) Where a company incorporated outside Brunei Darussalam which has been carrying on business in Brunei Darussalam ceases to carry on business in Brunei Darussalam, it may be wound up as an unregistered company under this Part notwithstanding that it has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of the country under which it was incorporated.

Contributories in winding up of unregistered company

294. (1) In the event of an unregistered company being wound up, every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of —

(a) any debt or liability of the company;

(b) any sum for the adjustment of the rights of the members themselves; or

(c) the costs and expenses of winding up the company,

and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of such liability as aforesaid.

(2) In the event of the death, bankruptcy or insolvency, of any contributory, or marriage of any female contributory, the provisions of this Act with respect to the personal representatives, to the trustees of bankrupt or insolvent contributories, and to the liabilities of husbands and wives respectively, shall apply.

Power of Court to stay or restrain proceeding

295. The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order shall, in the case of an unregistered company, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

Actions stayed on winding up order

296. Where an order has been made for winding up an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the Court, and subject to such terms as the Court may impose.

Provisions of Part VIII cumulative

297. The provisions of this Part with respect to unregistered companies shall be in addition to and not in restriction of any provisions hereinbefore in this Act contained with respect to winding up companies by the Court, and the Court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed and registered under this Act:

Provided that an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this Part.

PART IX

COMPANIES INCORPORATED OUTSIDE BRUNEI DARUSSALAM CARRYING ON BUSINESS WITHIN BRUNEI DARUSSALAM

Companies to which Part IX applies

298. This Part applies apply to all companies incorporated outside Brunei Darussalam which, after 1st January 1957, being the date of commencement of this Act, establish a place of business in Brunei Darussalam, and to all companies incorporated outside Brunei Darussalam which have, before the commencement of this Act, established a place of business in Brunei Darussalam and continue to have an established place of business within Brunei Darussalam at the commencement of this Act.

Documents to be delivered to Registrar by companies carrying on business in Brunei Darussalam *[S 118/2010]*

299. (1) Every company incorporated outside Brunei Darussalam shall, before it establishes a place of business or commences to carry on business in Brunei Darussalam, lodge with the Registrar for registration —

(a) a certified copy of the certificate of its incorporation or registration in its place of incorporation or origin or a document of similar effect;

(b) a certified copy of its charter, statute or memorandum and articles or other instrument constituting or defining its constitution;

(c) a list of its directors containing similar particulars with respect to its directors as are by this Act required to be contained in the register of the directors, managers and secretaries of a company incorporated under this Act;

(d) where the list includes directors resident in Brunei Darussalam who are members of the local board of directors, a memorandum duly executed by or on behalf of the company incorporated outside Brunei Darussalam stating the powers of the local directors;

(e) a memorandum of appointment or power of attorney under the seal of the company incorporated outside Brunei Darussalam or executed on its behalf in such manner as to be binding on the company and, in either case, verified in the prescribed manner, stating the names and addresses of two or more individuals resident in Brunei Darussalam authorised to accept on its behalf service of process and any notices required to be served on the company; and

(f) notice of the situation of its registered office in Brunei Darussalam and, unless the office is open and accessible to the public during ordinary business hours on each business day, the days and hours during which it is open and accessible to the public,

and on payment of the appropriate fees and subject to this Act the Registrar shall register the company by registration of the documents.

(2) Where a memorandum of appointment or power of attorney lodged with the Registrar in pursuance of subsection (1)*(e)* is executed by a person on behalf of the company, a copy of the deed or document by which that person is authorised to execute the memorandum of appointment or power of attorney, verified by statutory declaration in the prescribed manner, shall be lodged with the Registrar and the copy shall for all purposes be regarded as an original.

(3) Subsection (1) applies to a company registered outside Brunei Darussalam which was not registered but which, immediately before 31st December 2010, being the date of commencement of the Companies Act (Amendment) Order, 2010 (S 118/2010), had a place of business or was carrying on business in Brunei Darussalam and, on that date, had a place of business or was carrying on business in Brunei Darussalam, as if it established that place of business or commenced to carry on that business on that date.

Power of companies incorporated outside Brunei Darussalam to hold immovable property

300. A company incorporated outside Brunei Darussalam which shall have filed with the Registrar the documents specified in section 299, shall have the same power to acquire hold and dispose of immovable property in Brunei Darussalam as if it were a company incorporated under this Act.

Power to refuse registration of company incorporated outside Brunei Darussalam in certain circumstances *[S 118/2010]*

300A. Notwithstanding anything in this Act or any other written law, the Registrar shall refuse to register a company under this Part if he is satisfied that the company incorporated outside Brunei Darussalam is being used or is likely to be used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Brunei Darussalam or is acting or likely to act against the national security or interest.

Returns to be delivered to Registrar where documents etc. altered *[S 118/2010]*

301. (1) If in the case of any company to which this Part applies any alteration is made in —

(a) the charter, statutes or memorandum and articles of the company or any such instrument as aforesaid;

(b) the directors of the company or the particulars contained in the list of the directors;

(c) the names or addresses of the persons authorised to accept service on behalf of the company;

(d) the situation or address or designation of situation or address of the registered office of the company incorporated outside Brunei Darussalam or the days or hours during which it is open and accessible to the public;

(e) the address of the registered office of the company incorporated outside Brunei Darussalam in its place of incorporation or origin;

(f) the name of the company incorporated outside Brunei Darussalam; or

(g) the powers of any directors resident in Brunei Darussalam who are members of the local board of directors of the company incorporated outside Brunei Darussalam,

the company incorporated outside Brunei Darussalam shall, within one month or within such further period as the Registrar in special circumstances

allow after the change or alteration, lodge with the Registrar particulars of the change or alteration and such documents as are required.

Balance sheet of company carrying on business in Brunei Darussalam

302. (1) Every company to which this Part applies shall in every calendar year make out a balance sheet in such form, and containing such particulars and including such documents, as under the provisions of this Act it would, if it had been a company within the meaning of this Act, have been required to make out and lay before the company in general meeting, and deliver a copy of that balance sheet to the Registrar for registration.

(2) If any such balance sheet is not written in the English language, there shall be annexed to it a certified translation thereof.

(3) Subject to this section, a company incorporated outside Brunei Darussalam shall, within 2 months of its annual general meeting, lodge with the Registrar, a copy of its balance sheet made up to the end of its last financial year in such form and containing such particulars and accompanied by copies of such documents as the company is required to annex, attach or send with its balance sheet by the law for the time being applicable to that company in the place of its incorporation or origin, together with a statutory declaration in the prescribed form verifying that the copies are true copies of the documents so required.

[S 118/2010]

(4) The Registrar may, if he is of the opinion that the balance sheet and other documents referred to in subsection (3) do not sufficiently disclose the company's financial position, require the company to lodge a balance sheet within such period, in such form and containing such particulars and to annex thereto such documents as the Registrar by notice in writing to the company requires but this subsection does not authorise the Registrar to require a balance sheet to contain any particulars or the company to annex, attach or to send any documents that would not be required to be furnished if the company were a public company incorporated under this Act.

[S 118/2010]

(5) The company shall comply with the requirements set out in the notice.

[S 118/2010]

(6) Where a company to which this Part applies, is not required by the law of the place of its incorporation or origin to hold an annual general meeting and prepare a balance sheet, the company shall prepare and lodge with the Registrar a balance sheet within such period, in such form and containing such particulars and to annex thereto such documents as the directors of the company would have been required to prepare or obtain if the company were a public company incorporated under this Act.

[S 118/2010]

(7) In addition to the balance sheet and other documents required to be lodged with the Registrar by subsections (3) to (6), a company incorporated outside Brunei Darussalam shall lodge with the Registrar with such balance sheet and other documents a duly audited statement showing its assets used in and liabilities arising out of its operations in Brunei Darussalam as at the date to which its balance sheet was made up and a duly audited profit and loss account which, in so far as is practicable, complies with the requirements of the accounting standards which gives a true and fair view of the profit or loss arising out of the company's operation in Brunei Darussalam for the last preceding financial year of the company:

Provided that —

(a) the company shall be entitled to make such apportionments of expenses incurred in connection with operations or administration affecting both Brunei Darussalam and elsewhere and to add such notes and explanations as in its opinion are necessary or desirable in order to give a true and fair view of the profit or loss of its operation in Brunei Darussalam; and

(b) the Registrar may waive compliance with this subsection in relation to any company incorporated outside Brunei Darussalam if he is satisfied that —

(i) it is impractical to comply with this subsection having regard to the nature of the company's operations in Brunei Darussalam;

(ii) it would be of no real value having regard to the amount involved;

(iii) it would involve expense unduly out of proportion to its value; or

(iv) it would be misleading or harmful to the business of the company or to any company related to the company.

[S 118/2010]

(8) A statement and profit and loss account shall be deemed to have been duly audited for the purposes of subsection (7) if it is accompanied by a report by an authorised auditor appointed to provide auditing services in respect of the company's operations in Brunei Darussalam.

[S 118/2010]

(9) Without prejudice to the powers of the Registrar under paragraph *(b)* of the proviso to subsection (7), a company incorporated outside Brunei Darussalam may apply to the Registrar in writing for an order relieving the company incorporated outside Brunei Darussalam from any requirement of this section relating to the form and content of accounts or reports and the Registrar may make such an order either unconditionally or on condition that the company incorporated outside Brunei Darussalam complies with such other requirements relating to the form and content of the accounts or reports as the Registrar thinks fit to impose.

[S 118/2010]

(10) The Registrar shall not make an order under subsection (9) unless he is of the opinion that compliance with the requirements of this section would render the accounts or reports misleading or inappropriate to the circumstances of the company incorporated outside Brunei Darussalam or would impose unreasonable burdens on the company incorporated outside Brunei Darussalam.

[S 118/2010]

(11) The Registrar may make an order under subsection (9) which may be limited to a specific period and may from time to time revoke or suspend the operation of any such order.

[S 118/2010]

(12) In this section, "authorised auditor" means a person authorised to perform the duties required by this Act to be performed by an auditor.

[S 118/2010]

Obligation to state name of company, whether limited and country where incorporated

303. Every company to which this Part applies shall —

(a) in every prospectus inviting subscriptions for its shares or debentures in Brunei Darussalam state the country in which the company is incorporated;

(b) conspicuously exhibit on every place where it carries on business in Brunei Darussalam the name of the company and the country in which the company is incorporated;

(c) cause the name of the company and of the country in which the company is incorporated to be stated in legible characters in all bill-heads and letter paper, and in all notices, advertisements, and other official publications of the company; and

(d) if the liability of the members of the company is limited, cause notice of that fact to be stated in legible characters in every such prospectus as aforesaid and in all bill-heads, letter paper, notices, advertisements and other official publications of the company in Brunei Darussalam and to be affixed on every place where it carries on its business.

Service on company to which Part IX applies

304. Any process or notice required to be served on a company to which this Part applies shall be sufficiently served if addressed to any person whose name has been delivered to the Registrar under this Part and left at or sent by post to the address which has been so delivered:

Provided that —

(a) where any such company makes default in delivering to the Registrar the name and address of a person resident in Brunei Darussalam who is authorised to accept on behalf of the company service of process or notices; or

(b) if at any time all the persons whose names and addresses have been so delivered are dead or have ceased so to reside, or refuse to accept service on behalf of the company, or for any reason cannot be served,

a document may be served on the company by leaving it at or sending it by post to any place of business established by the company in Brunei Darussalam.

Cesser of business in Brunei Darussalam *[S 118/2010]*

304A. (1) If a Part IX company ceases to have a place of business or to carry on business in Brunei Darussalam, it shall, within 7 days after so ceasing, lodge with the Registrar notice of that fact, and as from the day on which the notice is so lodged its obligation to lodge any document (not being a document that ought to have been lodged before that day) with the Registrar shall cease, and the Registrar shall upon the expiration of 12 months after the lodging of such notice remove the name of that company incorporated outside Brunei Darussalam from the register.

(2) If a company incorporated outside Brunei Darussalam goes into liquidation or is dissolved in its place of incorporation or origin —

(a) each person who immediately prior to the commencement of the liquidation proceedings was an agent shall, within one month after the commencement of the liquidation or the dissolution or within such further time as the Registrar in special circumstances allows, lodge or cause to be lodged with the Registrar notice of that fact and, when a liquidator is appointed, notice of such appointment; and

(b) the liquidator shall, until a liquidator for Brunei Darussalam is duly appointed by the Court, have the powers and functions of a liquidator for Brunei Darussalam.

(3) A liquidator of a company incorporated outside Brunei Darussalam appointed for Brunei Darussalam by the Court or a person exercising the powers and functions of such a liquidator —

(a) shall, before any distribution of the company incorporated outside Brunei Darussalam's assets is made, by advertisement in a newspaper circulating generally in each country where the company incorporated outside Brunei Darussalam had been carrying on business prior to the liquidation if no liquidator has been appointed for that place, invite all creditors to make their claims against the company incorporated outside Brunei Darussalam within a reasonable time prior to the distribution;

(b) subject to subsection (7), shall not, without obtaining an order of the Court, pay out any creditor to the exclusion of any other creditor of the company incorporated outside Brunei Darussalam; and

(c) shall, unless otherwise ordered by the Court, only recover and realise the assets of the company incorporated outside Brunei Darussalam in Brunei Darussalam and shall, subject to paragraph *(b)* and subsection (7), pay the net amount so recovered and realised to the liquidator of that company incorporated outside Brunei Darussalam for the place where it was formed or incorporated after paying any debts and satisfying any liabilities incurred in Brunei Darussalam by the company incorporated outside Brunei Darussalam.

(4) Where a company incorporated outside Brunei Darussalam has been wound up so far as its assets in Brunei Darussalam are concerned and there is no liquidator for the place of its incorporation or origin, the liquidator may apply to the Court for directions as to the disposal of the net amount recovered in pursuance of subsection (3).

(5) On receipt of a notice from an agent that the company has been dissolved, the Registrar shall remove the name of the company from the register.

(6) Where the Registrar has reasonable cause to believe that a company incorporated outside Brunei Darussalam has ceased to carry on business or to have a place of business in Brunei Darussalam, the provisions of this Act relating to the striking off the register of the names of defunct companies shall with such adaptations as are necessary extend and apply accordingly.

(7) Section 250 applies to a company incorporated outside Brunei Darussalam wound up or dissolved pursuant to this section as if for references to a company there were substituted references to a company incorporated outside Brunei Darussalam.

(8) Where the Registrar is satisfied that a company incorporated outside Brunei Darussalam is being used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Brunei Darussalam or against the national security or interest, he shall strike the name of the company incorporated outside Brunei Darussalam off the

register and it shall thereupon cease to be registered as a company incorporated outside Brunei Darussalam under this Part.

(9) Any person aggrieved by the decision of the Registrar under subsection (8), may, within 30 days of the date of the decision, appeal to the Minister of Finance whose decision shall be final.

Restriction on use of certain names *[S 118/2010]*

304B. (1) No company incorporated outside Brunei Darussalam shall be registered by a name that, in the opinion of the Registrar, is undesirable, or is a name, or a name of a kind, that the Minister of Finance has directed the Registrar not to accept for registration.

(2) Any change in the name of a company incorporated outside Brunei Darussalam shall not be registered if in the opinion of the Registrar the new name of the company is undesirable notwithstanding that particulars of the change have been lodged in accordance with section 301.

(3) No company incorporated outside Brunei Darussalam to which this Part applies shall use in Brunei Darussalam any name other than that under which it is registered under this Part.

(4) If default is made in complying with subsection (3), the company incorporated outside Brunei Darussalam, every officer of the company who is in default and every agent of the company who knowingly and wilfully authorises or permits the default is guilty of an offence and liable on conviction to a fine not exceeding $2,000 and a default fine.

Office where documents to be filed

305. (1) Any document, which any company to which this Part applies is required to deliver to the Registrar shall be delivered to the Registrar at the registration office.

(2) If any company to which this Part applies ceases to have a place of business in Brunei Darussalam, it shall forthwith give notice of the fact to the Registrar and as from the date on which notice is so given, the obligation of the company to deliver any document to the Registrar shall cease.

Penalties

306. If any company to which this Part applies fails to comply with any of the foregoing provisions of this Part, the company and every officer or agent of the company is guilty of an offence and liable on conviction to a fine of $1,000 or, in the case of a continuing offence, $25 for every day during which the default continues.

Interpretation of Part IX

307. For the purposes of this Part —

"certified" means certified in the prescribed manner to be a true copy or a correct translation;

"director", in relation to a company, includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act;

"place of business" includes a share transfer or share registration office;

"prospectus" has the same meaning as when used in relation to a company incorporated under this Act.

PART X

RESTRICTIONS ON SALE OF SHARES AND OFFERS OF SHARES FOR SALE

Provisions with respect to prospectuses of foreign companies inviting subscriptions for shares or offering shares for sale

308. (1) It shall not be lawful for any person to —

(a) issue, circulate or distribute in Brunei Darussalam any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Brunei Darussalam, whether the company has or has not established, or when formed will or will not establish, a place of business in Brunei Darussalam, unless —

(i) before the issue, circulation or distribution of the prospectus in Brunei Darussalam a copy thereof, certified by the chairman and two other directors of the company as having been approved by resolution of the managing body, has been delivered for registration to the Registrar;

(ii) the prospectus states on the face of it that the copy has been so delivered;

(iii) the prospectus is dated;

(iv) the prospectus otherwise complies with this Part; or

(b) issue to any person in Brunei Darussalam a form of application for shares in or debentures of such a company or intended company as aforesaid, unless the form is issued with a prospectus which complies with this Part:

Provided that this provision does not apply if it is shown that the form of application was issued in connection with an invitation made in good faith to a person to enter into an underwriting agreement with respect to the shares or debentures.

(2) This section does not apply to the issue to existing members of debenture holders of a company of a prospectus or form of application relating to share in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons, but, subject as aforesaid, this section shall apply to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently.

(3) Where any document by which any shares in or debentures of a company incorporated outside Brunei Darussalam are offered for sale to the public would, if the company concerned had been a company within the meaning of this Act, have been deemed by virtue of section 41 to be a prospectus issued by the company, that document shall be deemed to be, for the purposes of this section, a prospectus issued by the company.

(4) An offer of shares or debentures for subscription or sale to any person whose ordinary business or part of whose ordinary business it is to buy or sell shares or debentures, whether as principal or agent, shall not be deemed an offer to the public for the purposes of this section.

(5) Section 40 shall extend to every prospectus to which this section applies.

(6) Any person who is knowingly responsible for the issue, circulation or distribution of any prospectus, or for the issue of a form of application for shares or debentures, in contravention of the provisions of this section is guilty of an offence and liable on conviction to a fine of $5,000 and imprisonment for 2 years.

(7) In this section and section 309, "prospectus", "shares" and "debentures" have the same meanings as when used in relation to a company incorporated under this Act.

Requirements as to prospectus

309. (1) In order to comply with this Part, a prospectus in addition to complying with the provisions of section 308(1)*(a)*(ii) and (iii) shall —

(a) contain particulars with respect to the following matters —

(i) the objects of the company;

(ii) the instrument constituting or defining the constitution of the company;

(iii) the enactments or provisions having the force of an enactment, by or under which the incorporation of the company was effected;

(iv) an address in Brunei Darussalam where such instrument, enactments or provisions, or copies thereof, and if the same are in a foreign language a translation thereof certified in the prescribed manner, can be inspected;

(v) the date on which and the country in which the company was incorporated;

(vi) whether the company has established a place of business in Brunei Darussalam, and, if so, the address of its principal office in Brunei Darussalam:

Provided that the provisions of sub-paragraphs (i), (ii), (iii) and (iv) do not apply in the case of a prospectus issued more than 2 years after the date at which the company is entitled to commence business.

(b) subject to the provisions of this section, state the matters specified in Part I of the Third Schedule (other than those specified in paragraph 1 of that Part I) and set out the reports specified in Part II of that Schedule subject always to the provisions contained in Part III of that Schedule:

Provided that —

(a) where any prospectus is published as a newspaper advertisement, it shall be a sufficient compliance with the requirement that the prospectus must specify the objects of the company if the advertisement specifies the primary object with which the company was formed;

(b) in paragraph 3 of Part I of the Third Schedule, a reference to the constitution of the company shall be substituted for the reference to the articles; and

(c) paragraph 1 of Part III of the Third Schedule shall have effect as if the reference to the memorandum were omitted therefrom.

(2) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void.

(3) In the event of non-compliance with or contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention if —

(a) as regards any matter not disclosed, he proves that he was not cognisant thereof;

(b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or

(c) the non-compliance or contravention was in respect of matters which, in the opinion of the Court dealing with the case, were immaterial or were otherwise such as ought, in the opinion of that Court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters contained in paragraph 15 of Part I of the Third Schedule, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

(4) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act apart from this section.

Restriction on offering of shares for subscription or sale

310. (1) It shall not be lawful for any person to go from house to house offering shares for subscription or purchase to the public or any member of the public.

In this subsection, "house" shall not include an office used for business purposes.

(2) Subject as hereinafter provided in this subsection, it shall not be lawful to make an offer in writing to any member of the public (not being a person whose ordinary business or part of whose ordinary business it is to buy or sell shares, whether as principal or agent) of any shares for purchase, unless the offer is accompanied by a statement in writing (which must be signed by the person making the offer and dated) containing such particulars as are required by this section to be included therein and otherwise complying with the requirements of this section, or, in the case of shares in a company incorporated outside Brunei Darussalam, either by such a statement as aforesaid, or by such a prospectus as complies with this Part:

Provided that the provisions of this subsection shall not apply —

(a) where the shares to which the offer relates are shares which are quoted on, or in respect of which permission to deal has been granted by, any recognised stock exchange in Brunei Darussalam and the offer so states and specifies the stock exchange;

(b) where the shares to which the offer relates are shares which a company has allotted or agreed to allot with a view to their being offered for sale to the public; or

(c) where the offer was made only to persons with whom the person making the offer has been in the habit of doing regular business in the purchase or sale of shares.

(3) The written statement aforesaid shall not contain any matter other than the particulars required by this section to be included therein and shall not be in characters less large or less legible than any characters used in the offer or in any document sent therewith.

(4) The statement shall contain particulars with respect to the following matters —

(a) whether the person making the offer is acting as principal or agent, and if as agent the name of his principal and an address in Brunei Darussalam where that principal can be served with process;

(b) the date on which and the country in which the company was incorporated and the address of its registered or principal office in Brunei Darussalam;

(c) the authorised share capital of the company and the amount thereof which has been issued, the classes into which it is divided and the rights of each class of shareholders in respect of capital, dividends and voting;

(d) the dividends, if any, paid by the company on each class of shares during each of the 3 financial years immediately preceding the offer, and if no dividend has been paid in respect of shares of any particular class during any of those years, a statement to that effect;

(e) the total amount of any debentures issued by the company and outstanding at the date of the statement, together with the rate of interest payable thereon;

(f) the names and addresses of the directors of the company;

(g) whether or not the shares offered are fully paid-up, and, if not, to what extent they are paid-up;

(h) whether or not the shares are quoted on, or permission to deal therein has been granted by, any recognised stock exchange in Brunei Darussalam or elsewhere, and, if so, which, and, if not, a statement that they are not so quoted or that no such permission has been granted;

(i) where the offer relates to units, particulars of the names and addresses of the persons in whom the shares represented by the units are vested, the date of and the parties to any document defining the terms on which those shares are held, and an address in Brunei Darussalam where that document or a copy thereof can be inspected.

In this subsection, "company" means the company by which the shares to which the statement relates were or are to be issued.

(5) If any person acts, incites, or causes or procures any person to act, in contravention of this section, he is guilty of an offence and liable on conviction to a fine of $2,000 and imprisonment for 6 months, and in the case of a second or subsequent offence a fine of $5,000 and imprisonment for one year.

(6) Where a person convicted of an offence against this section is a company (whether a company within the meaning of this Act or not) every director and every officer concerned in the management of the company shall be guilty of the like offence unless he proves that the act constituting the offence took place without his knowledge or consent.

(7) In this section, unless the context otherwise requires —

"shares" means the shares of a company, whether a company within the meaning of this Act or not, and includes debentures and units; and

"unit" means any right or interest (by whatever name called) in a share,

and for the purposes of this section a person shall not in relation to a company be regarded as not being a member of the public by reason only

that he is a holder of shares in the company or a purchaser of goods from the company.

(8) *(a)* Where any person is convicted of having made an offer in contravention of the provisions of this section, the Court before which he is convicted may order that any contract made as a result of the offer shall be void, and, where it makes any such order, may give such consequential directions as it thinks proper for the repayment of any money or the retransfer of any shares.

(b) Where the Court makes an order under this subsection (whether with or without consequential directions) an appeal against the order and the consequential directions, if any, shall lie to the Court of Appeal.

PART XI

PROHIBITION OF PARTNERSHIPS WITH MORE THAN TWENTY MEMBERS

Prohibition of partnerships with more than twenty members

311. No company, association, or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Act.

ENFORCEMENT *[S 6/2015]*

Court may compel compliance *[S 6/2015]*

311A. (1) If any person in contravention of this Act, refuses or fails to permit the inspection of any register, minute book or document, or to supply a copy of any register, minute book or document, the Court may by order compel an immediate inspection of the register, minute book or document, or order the copy to be supplied.

(2) If any officer or former officer of a company has failed or omitted to do any matter or thing which under this Act he is or was required or directed to do, the Court on the application of the Registrar or any member

of the company, the Official Receiver or liquidator may, by order, require that officer or former officer to do such act, matter or thing immediately or within such time as is allowed by the order, and for the purpose of complying with any such order a former officer shall be deemed to have the same status, powers and duties as he had at the time the act, matter or thing should have been done.

MISCELLANEOUS OFFENCES

Penalty for false statement

312. If any person in any return, report, certificate, balance sheet or other document, required by or for the purposes of any of the provisions of this Act specified in the Ninth Schedule, wilfully makes a statement false in any material particular, knowing it to be false, he is guilty of an offence and liable on conviction to a fine and imprisonment for 2 years.

Penalty for improper use of word "*Berhad*" *[S 118/2010]*

313. Any person who uses any name or title, or trades or carries on business under any name or title, of which "Limited", "Berhad", or any abbreviation, imitation or translation of any of those words is the last word, or in any way holds out that the business is registered or incorporated that person is, unless at that time that business was duly incorporated, under this Act or registered under the Limited Liability Partnerships Order, 2010 (S 117/2010) or the Business Names Act (Chapter 92), is guilty of an offence and liable on conviction to a fine not exceeding $10,000, imprisonment for a term not exceeding 2 years or both.

GENERAL PROVISIONS AS TO OFFENCES

Provision with respect to default fines and meaning of "officer in default"

314. (1) Where by any section of this Act it is provided that a company and every officer of the company who is in default shall be liable to a default fine, the company and every such officer shall, for every day during which the default, refusal or contravention continues, be liable to a fine of such amount as is specified in the said section or, if the amount of the fine is not so specified, to a fine of $100.

[S 118/2010]

(2) For the purposes of any section in this Act which provides that an officer of a company who is in default shall be liable to a fine or penalty, "officer who is in default" means any director, manager, secretary or other officer of the company, who knowingly and wilfully authorises or permits the default, refusal or contravention mentioned in the section.

Applications of fines

315. The Court or Magistrate imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings, or in or towards rewarding the person on whose information or at whose suit the fine is recovered, and subject to any such direction all fines under this Act shall, notwithstanding anything in any other Act, be paid into the Treasury.

Penalty for failure to pay fine

316. (1) If any company fails to pay the whole or any part of any fine or penalty imposed by a Court or Magistrate under this Act within one month of the day on which the said fine or penalty was imposed, the Registrar shall publish in the *Gazette* and send to the company by post a notice that at the expiration of 2 months from the date of such notice the name of the company mentioned therein will, unless the said fine or penalty be sooner paid, be struck off the register and the company will be dissolved.

(2) At the expiration of the time mentioned in the notice the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the *Gazette*, and on such publication the company shall be dissolved:

Provided that the liability (if any) of every director, managing officer, and member of the company shall continue and may be enforced as if the company had not been dissolved.

(3) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the Court on the application of the company or member or creditor may, if satisfied that it is just that the company be restored to the register, order the name of the company to be restored to the register, and thereupon the company shall be deemed to have continued in existence as if its name had not been struck off; and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the

same position as nearly as may be as if the name of the company had not been struck off.

(4) A letter or notice under this section may be addressed to the company at its registered office or, if no office has been registered, to the care of some director or officer of the company or, if there is no director of officer of the company whose name and address are known to the Registrar of Companies, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum:

Provided that nothing in this section shall affect any other legal method of enforcing fines or penalties imposed by a magistrate.

Saving as to private prosecutors

317. Nothing in this Act relating to the institution of criminal proceedings by the Public Prosecutor shall be taken to preclude any person from instituting or carrying on any such proceedings.

Saving for privileged communications

318. Where proceedings are instituted under this Act against any person by the Public Prosecutor, nothing in this Act shall be taken to require any person who has acted as advocate for the defendant to disclose any privileged communication made to him in that capacity.

Service of documents on company

319. A document may be served on a company by leaving it at or sending it by post to the registered office of the company.

Electronic filing *[S 118/2010]*

319A. (1) The Registrar may require any document to be lodged under the Act to be filed electronically with the Registrar using the service provided by the Registry of Companies whereby the document under this Act may be filed with or submitted to the Registrar electronically.

(2) When any document is required to be filed with or submitted to the Registrar electronically by any person using the service referred to in subsection (1), the Registrar may allow the document to be filed or submitted by a prescribed person on behalf of the first-mentioned person, subject to such conditions as may be imposed from time to time by the Registrar on the prescribed person.

(3) When the Registry of Companies provides a service whereby documents required under this Act may be filed electronically with the Registrar, the Registrar and his officers shall not be liable for any loss and damage suffered by any person by reason of any error or omission of whatsoever nature or however caused appearing in any document obtained by any person under the services, if the error or omission —

(a) is made in good faith and in the ordinary course of the discharge of the duties of the Registrar or any such officers; or

(b) has occurred or arose as a result of any defect or breakdown of the service or in any of the equipment used for the service.

(4) A copy of or an extract from any document electronically filed with or submitted to the Registrar using the service referred to in subsection (1) which is supplied or issued by the Registrar and certified under his hand and seal to be a true copy of or extract from such document shall, in any proceedings, be admissible in evidence as of equal validity with the original document.

(5) Any information supplied by the Registrar that is certified by the Registrar under his hand and seal to be a true extract from any document filed or lodged with or submitted to the Registrar using the service referred to in subsection (1) shall, in any proceedings, be admissible.

Costs in actions by certain limited companies

320. Where a limited company is plaintiff in any action or other legal proceeding, any judge having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

Power of Court to grant relief in certain cases

321. (1) If in any proceeding for negligence, default, breach of duty or breach of trust against a person to whom this section applies, it appears to the Court hearing the case that person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably, and that, having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, that Court may relieve him, either wholly or partly, from his liability on such terms as the Court may think fit.

(2) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the Court for relief, and the Court on any such application shall have the same power to relieve him as under this section it would have had if it had been a Court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.

(3) Where any case to which subsection (1) applies is being tried by a judge with a jury, the judge, after hearing the evidence, may, if he is satisfied that the defendant ought in pursuance of that subsection to be relieved either in whole or in part from the liability sought to be enforced against him, withdraw the case in whole or in part from the jury and forthwith direct judgment to be entered for the defendant on such terms as to costs or otherwise as the judge may think proper.

(4) The persons to whom this section applies are the following —

(a) directors of a company;

(b) managers of a company;

(c) officers of a company;

(d) persons employed by a company as auditors, whether they are or are not officers of the company.

Power to enforce orders

322. Orders made by the Court under this Act may be enforced and shall be subject to appeal in the same manner as orders made in a civil proceeding pending therein.

GENERAL PROVISIONS AS TO ALTERATION OF TABLES, FORMS AND FEES ETC.

Power to alter tables and forms

323. (1) His Majesty the Sultan and Yang Di-Pertuan in Council* may by order specified in the *Gazette* alter Table A, the form in the Sixth Schedule and the table of fees in the Eighth Schedule, and may alter or add to Tables B, C, D and E in the First Schedule, and the forms in the Fifth Schedule.

(2) Any such order, when altered, shall be published in the *Gazette*, and thenceforth shall have the same force as if the alteration or addition authorised thereby had been included in one of the Schedules, but no alteration made in Table A shall affect any company registered before the alteration, or repeal, as respects that company, of any portion of that table.

Rules and fees

324. The fees specified in the Tenth Schedule and the rules specified in the Eleventh and Twelfth Schedules shall remain in force until amended by any subsidiary legislation made under this Act.

* Transferred to the Minister of Law** with the approval of His Majesty the Sultan and Yang Di-Pertuan with effect from 31st December 1988 — *[S 31/1988]*

**Transferred further to the Registrar of Companies with effect from16th September 1998 — *[S 32/1998]*